

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE MEETING**

WEDNESDAY, NOVEMBER 17, 2010

VOLUME 1

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE MEETING**

8:30 a.m.

Wednesday, November 17, 2010

Yates Auditorium

Department of the Interior

Washington, DC

COMMITTEE MEMBERS PRESENT:

Ms. Rosita Worl, Chair

Ms. Sonya Atalay

Mr. Alan Goodman

Mr. Eric Hemenway

Mr. Adrian John

Mr. Dan Monroe

Mr. Mervin Wright, Jr., Acting Chair

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1 **WELCOME AND ROLL CALL**

2 ROSITA WORL: Good morning, and welcome to the
3 NAGPRA Review Committee meeting. I would now like
4 to call the meeting to order, and let's do a roll
5 call please.

6 DAVID TARLER: Thank you, Madam Chair. When I
7 call your name if you would please respond here or
8 present.

9 Sonya Atalay?

10 SONYA ATALAY: Present.

11 DAVID TARLER: Alan Goodman?

12 ALAN GOODMAN: Present.

13 DAVID TARLER: Eric Hemenway?

14 ERIC HEMENWAY: Present.

15 DAVID TARLER: Dan Monroe?

16 DAN MONROE: Present.

17 DAVID TARLER: Mervin Wright, Jr.?

18 MERVIN WRIGHT, JR.: I'm here.

19 DAVID TARLER: Rosita Worl?

20 ROSITA WORL: Here.

21 DAVID TARLER: And Adrian John?

22 ADRIAN JOHN: Present.

23 ROSITA WORL: Thank you.

24 DAVID TARLER: All the Review Committee members
25 are present.

1 ROSITA WORL: Thank you. We have a – all of
2 our committee members are present. We do have a
3 quorum.

4 And the very first thing I would like to do is
5 to welcome our newest member, Adrian John. Adrian
6 John is a religious leader. He is from the Seneca
7 Nation. He was appointed – or was nominated by the
8 Seneca Nation, and the Secretary of Interior
9 appointed him on October 28th. And he replaced
10 Donna Augustine, whom we thank very much for her
11 service, and we look forward to working with Adrian
12 in the next years.

13 And if I may, what I'd like to do now is to
14 call on Adrian as a religious leader to do the
15 traditional welcome.

16 **TRADITIONAL WELCOME**

17 ADRIAN JOHN: My mic doesn't work, so can
18 everyone hear me? Can you hear me all right?

19 (Native American language.)

20 Just to translate, what we do in (Native
21 American language) or the Seneca Nation or
22 Iroquois, Haudenosaunee, is we give thanks.
23 (Native American language) is what I just did. We
24 give thanks for everything that the Creator has
25 given us on the earth. And we start with the earth

1 itself, then the water, then the plants and berries
2 and strawberries. We go up to the trees. We go to
3 the animals. We go to the birds. We go all the
4 way up until we hit the sun, the moon, the stars,
5 and then our four beings that, you know, we call
6 them our guiders in our lifetime here on this
7 earth. And then we thank the Creator for
8 everything he's given us because we give thanks for
9 everything because we believe that everything is
10 already provided for us here and we just have to
11 make the best use of it or learn how to use it, and
12 that's our task here on earth.

13 So at the end of each part, you know, it's all
14 routine through there, but at the end of each part
15 I have – what we say (Native American language), we
16 hope that, you know, in doing this process, usually
17 at home everyone goes (Native American language),
18 which means they agree with it. They agree that
19 we're giving thanks for these items. And by the
20 end of the process we all are of one mind where we
21 can come together in a meeting and decide or meet,
22 and we're not thinking of anything else except for
23 that we're here for a purpose. So that's what that
24 means.

25 (Native American language.)

1 ROSITA WORL: *Gunalchéesh.*

2 Mr. Tarler?

3 DAVID TARLER: Madam Chair, I appreciate your
4 introducing Adrian John, our newest member of the
5 Review Committee. On behalf of the Department of
6 the Interior staff, whose work supports the
7 National NAGPRA Program and the Review Committee,
8 we commend Ms. Donna Augustine for the benefit she
9 has brought to all NAGPRA constituents through the
10 considerable time, thought, and effort she devoted
11 to the NAGPRA process, and we extend a sincere
12 welcome to Mr. Adrian John.

13 Madam Chair, this morning, the Principal
14 Deputy Assistant Secretary of the Interior for Fish
15 and Wildlife and Parks, Mr. Will Shafroth, has
16 joined us, and would like to welcome the Review
17 Committee and the audience on behalf of the
18 Department of the Interior.

19 ROSITA WORL: Welcome.

20 **WELCOME ON BEHALF OF THE DEPARTMENT OF THE INTERIOR**

21 WILL SHAFROTH: Thank you, Madam Chair, and
22 thank you all for being here. I'm Will Shafroth,
23 and I work for Secretary Ken Salazar and the
24 Assistant Secretary Tom Strickland, neither of whom
25 could be here today, but they extend their

1 gratitude and appreciation for your service in
2 particular up there on the podium and all the good
3 work that you do.

4 First, a welcome to Adrian, and it's nice for
5 me because as the person in the chain of the paper
6 that ultimately resulted in your appointment, it's
7 nice to actually associate a face with a name on a
8 — in black and white, and so congratulations. And
9 also thank you to Alan Goodman for your service. I
10 understand this is your last meeting, and I know
11 this has been an important time since you've been
12 on the committee and a lot of progress has been
13 made. And thank you for helping to kind of launch
14 it in the trajectory where it's now going. So we
15 appreciate your service.

16 I also want to take a second and acknowledge
17 my friend Kim Elton, who is here, Senior Advisor
18 for Secretary Salazar on matters related to Alaska,
19 or we might say all matters related to Alaska. We
20 rely on Kim's good wisdom and knowledge, and I know
21 that working with the tribes and working on NAGPRA
22 issues is a key part of his responsibilities. And
23 I'm sure Kim will be around over the day
24 occasionally and happy to answer any questions. We
25 do rely on him for lots of information.

1 Well, we just wanted to pay a quick visit to
2 you all and acknowledge the 20th anniversary of
3 NAGPRA and the importance of this occasion in
4 expressing our thanks for coming here to Interior
5 to work on these issues. I know you've had a
6 couple of days of meetings and discussions. And
7 like many of the things that we work on here at the
8 Department of the Interior, they aren't without
9 their controversy, aren't necessarily without their
10 disagreement, but we appreciate the spirit of
11 Adrian's blessing there because that is really what
12 we're here to do. Whether you represent a museum
13 or a tribe or a community, I think we have a common
14 goal in mind, and we just need to take the time
15 it's going to take to work through the many issues
16 that we have to work through to find our mutually
17 agreed-upon ends here. And so we appreciate the
18 time and effort and sometimes the difficulty that's
19 involved in this process, and we understand that on
20 a daily basis on a whole number of issues that we
21 have to contend with around here.

22 And we do take these responsibilities serious
23 here at the Interior. I just want to share that
24 Secretary Salazar, whose family helped to settle
25 Santa Fe in the 1500s, he hasn't been around as

1 long as many of the people on the – whose families
2 have been settled in your areas around the country,
3 but he has some appreciation about history in this
4 country. And one of his real passions in taking
5 the job as the Secretary was to represent and bring
6 forth the historical and cultural resources and
7 history of this country, and he cares deeply about
8 it. He wants to have this Department do a better
9 job of telling America's story, and whether that
10 story be about the landing on Plymouth Rock or the
11 settlements that came up through South and Central
12 American and Mexico or whether it be the Native
13 peoples of this country, he thinks that we need to
14 do a better job and a more thorough job of telling
15 those stories. And obviously NAGPRA and the work
16 that you're doing is a part of that.

17 The key initiative that the President and the
18 Secretary are focused on right now in this general
19 space is what's called "America's Great Outdoors,"
20 and we actually have just completed some 56
21 listening sessions around the country where we
22 heard from people in all 50 states, on all
23 different sides of every issue you can imagine,
24 about their vision about what this country should
25 do relative to the outdoors. And what I mean by

1 that is conservation, recreation, historical and
2 cultural preservation, reconnecting people with the
3 outdoors.

4 And we heard from many people all over the
5 country about these issues that you are grappling
6 with here today. In fact, we were in Minnesota and
7 in Spokane, Washington, specifically to hear from
8 Native peoples about the concerns that they have,
9 whether it be – in the Northwest, we heard the most
10 important ways to reconnect people to the outdoors
11 up there was to restore the natural flow of water
12 so that salmon could return to their lands that
13 they had once inhabited and reconnect with the
14 people and their cultures. In Minnesota, we heard
15 from the – there with the Shakopee Tribe and heard
16 a lot about some of the issues there in the Great
17 Lakes around the natural resources issue. So we
18 have reached out directly on these issues, and they
19 will be a part of this report that the President
20 will receive sometime in the next few months.

21 I want to just acknowledge the hard work of
22 Sherry Hutt, and especially in getting the NAGPRA
23 approval done, which was – Sherry, as you know – no
24 small feat this last year, and it took a long time
25 and a lot of effort and it had the direct

1 engagement of people all the way up to the
2 Secretary to make sure that happened. And
3 hopefully that's provided you all with an important
4 basis for your work.

5 And lastly, I just want to share a personal
6 story. My great-grandfather was a member of
7 Congress back over a hundred years ago, and one of
8 the things that he did while in Congress was to be
9 a major force in establishing the Antiquities Act
10 in this country. And as I've gone back and
11 sometimes you don't appreciate what good things
12 your ancestors did until you're of an age where
13 you're interested in those subjects. And so I
14 pulled a book off the shelf since I've been here in
15 this job, and I discovered that he was the member
16 of Congress who was especially pushing hard for
17 archaeological inclusion in the Antiquities Act and
18 using that as a reason for the President to use his
19 power in the Antiquities Act to set aside special
20 lands, in particular lands of First Americans for
21 archaeological reasons. So I am able to connect to
22 my ancestors in a way on this subject as you all
23 connect with yours in your own way.

24 So in closing, just to thank you again for all
25 the great work that you do, and in the future the

1 great work that you're going to do on behalf of the
2 Department.

3 ROSITA WORL: Thank you very much. Thank you
4 very much for being here and taking the time out of
5 your very busy schedule. Thank you for your kind
6 words. And if you might extend our deepest regards
7 to the Secretary and thank him for his great work
8 in the cleanup of the Gulf oil spill and the
9 ongoing restoration efforts, we really appreciate
10 his —

11 WILL SHAFROTH: I will do that. I'll see him
12 later today, and I'm sure I'll pass it on.

13 ROSITA WORL: Thank you.

14 WILL SHAFROTH: Thank you.

15 ROSITA WORL: Mr. Tarler, did you have further
16 comments to make?

17 DAVID TARLER: I will have some comments with
18 respect to the first item for consideration on the
19 Review Committee's agenda.

20 ROSITA WORL: All right. So we are — we are
21 legally convened, the notices have been published
22 in the Federal Register, and we will proceed with
23 the meeting.

24 But first of all I wanted to thank Sherry Hutt
25 and her staff and the George Washington University

1 for the great event that was sponsored. We are at
2 our twentieth year of NAGPRA, and we think it was
3 great, the celebration. We've had nothing but good
4 comments. And yes, we heard there were some
5 disagreements but that's always healthy as well to
6 move on. So I want to thank Sherry and her staff,
7 and if she will convey to George Washington
8 University also thanks for their great support.
9 And Sherry, maybe you could introduce your staff so
10 the public knows who is all here?

11 SHERRY HUTT: Thank you, Madam Chairman. Of
12 course, you know David Tarler, who is your
13 Designated Federal Officer. Also in the room and
14 having been working on this marathon NAGPRA week,
15 standing in the back with the red sweater Sangita
16 Chari, who is your grants coordinator, and next to
17 her Jaime Lavallee, who you all know when you do
18 notices. And seated down here, Richard Waldbauer
19 who joined us this year. And I think in the back –
20 wave, Robin – Robin Coates, who does all of our
21 support items. And later you will be hearing from
22 Mariah Soriano on the databases. And of course
23 counsel if you have not met Carla Mattix and
24 Stephen Simpson. But I also want to recognize Lesa
25 Koscielski, who does the transcription, and the

Lesla Koscielski Consulting
Rapid City, South Dakota
(605) 342-3298

1 interns you will be hearing from, Sally Butts and
2 Katherine Carlton, and Katherine is back there who
3 brought everything together last evening. And we
4 thank you all. I appreciate that, Madam Chair.

5 ROSITA WORL: Thank you very much, Sherry. And
6 thank you to all of the staff for all of the
7 contributions and support that they give to the
8 Review Committee.

9 The next item that we will have on the agenda
10 is a dispute between Sealaska Corporation and the
11 Wrangell Cooperative Association and the Alaska
12 State Museum. And for this dispute, and we will
13 have a second dispute this afternoon, I will be
14 recusing myself as the Chair of the Review
15 Committee, and Mervin Wright, who is the Chair of
16 the Paiutes, has graciously agreed to chair the
17 meeting.

18 Before I do – before I leave, I would like to
19 first of all express our deepest apologies to an
20 individual who was not included in the presentation
21 list. And so I'd like to note for the record that
22 Ron Williams, who is a T'akdeintaan leader and a
23 widely – leader in our whole region and the state
24 of Alaska, will be replacing myself on the Review
25 Committee – on the dispute panel. So I want to say

1 to Ron, I'm sorry that this occurred, and I will
2 now excuse myself or recuse myself and ask Mervin
3 to now chair the meeting.

4 MERVIN WRIGHT, JR.: Thank you, Rosita.

5 We'll start - we'll start hearing from the
6 list of witnesses that are included on the agenda -
7 excuse me, Dave Tarler, you have some comments?

8 **DISCUSSION OF DISPUTE PROCESS BY DFO AND COUNSEL**

9 DAVID TARLER: Thank you, Mr. Chair Pro Tem.
10 Before we begin the presentations, there are a
11 couple of matters that we would like to make for
12 the record. The first matter is the tabling of the
13 two disputes that you will hear today on the
14 agenda. As you know, the meeting procedures, which
15 are published on the National NAGPRA Program
16 website, provide that there be consultation between
17 the DFO and the Chair of the Review Committee with
18 respect to matters appearing on the agenda. With
19 respect to these two disputes that we will hear
20 today, the decision as to whether they would go on
21 the agenda was entirely my own as the DFO.

22 The second matter involves some issues
23 regarding dispute procedures and disputes that come
24 before the Review Committee. As you know, on the
25 agenda for tomorrow, we will have a discussion of

1 those dispute procedures. But before we begin the
2 presentations of the two disputes today, Counsel
3 Carla Mattix would like to address some of those
4 issues, and I would ask that she do so now.

5 CARLA MATTIX: Good morning. I thought it
6 would be appropriate at this time, especially with
7 a new member and with some of the issues before us
8 in the disputes today, to just go over some of the
9 parameters about the Review Committee's role with
10 respect to disputes that are in the statute and
11 regulations, just as a review and to guide you
12 today.

13 The NAGPRA Review Committee is an advisory
14 committee established pursuant to Section 8 of
15 NAGPRA and the Federal Advisory Committee Act.
16 NAGPRA provides that the Review Committee may
17 facilitate the resolution of any disputes among
18 Indian tribes, Native Hawaiian organizations or
19 lineal descendants and Federal agencies and museums
20 relating to the return of cultural items.
21 Furthermore, the Review Committee may make findings
22 related to the identity or cultural affiliation of
23 cultural items or the return of such items.

24 NAGPRA also directs the Secretary of the
25 Interior to establish such rules and regulations

1 for the committee as may be necessary. The
2 Secretary has respectfully opted to allow the
3 Review Committee working with the Designated
4 Federal Officer to establish its own guidelines for
5 facilitating the resolution of disputes that
6 include both procedures and criteria. These
7 dispute procedures have evolved over the years;
8 however, the Secretary has promulgated regulations
9 that provide certain parameters for disputes.

10 43 CFR 10.17, which are the NAGPRA
11 regulations, governs dispute resolution and
12 provides regulatory requirements regarding the
13 Review Committee role. This section states, first,
14 formal – it has a section called “Formal and
15 Informal Resolutions,” and it states, Any person
16 who wishes to contest actions taken by museums,
17 Federal agencies, Indian tribes, or Native Hawaiian
18 organizations with respect to the repatriation and
19 disposition of cultural items is encouraged to do
20 so through informal negotiations to achieve a fair
21 resolution of the matter. The Review Committee may
22 aide in this regard as described below. In
23 addition, the United States district courts have
24 jurisdiction over any action brought that alleges a
25 violation of the Act.

1 Then the second section of this regulation
2 states what the Review Committee role is. The
3 Review Committee may facilitate the informal
4 resolution of disputes relating to these
5 regulations among interested parties that are not
6 resolved by good faith negotiations. Review
7 Committee actions may include convening meetings
8 between parties to disputes, making advisory
9 findings as to contested facts, and making
10 recommendations to the disputing parties or to the
11 Secretary as to the proper resolution of disputes
12 consistent with these regulations and the Act.

13 Thus the Review Committee is directed to make
14 findings of fact. Findings and interpretations of
15 disputed laws are generally the province of the
16 judiciary. In the current matters before the
17 Review Committee, the categorization of sacred
18 objects and objects of cultural patrimony will
19 depend on the nature of the traditional religion
20 and the system of property rights used by
21 particular Indian tribes. While precluded from
22 making findings regarding the validity or
23 interpretation of tribal law, the Review Committee
24 will need to consider the applicable tribal law
25 practice or custom when determining whether an

1 object fits the definition of cultural patrimony or
2 sacred object and in the context of the right of
3 possession.

4 In that regard, we offer the following
5 guidance – “we” being the Solicitor’s Office,
6 provided to the Department through decisions of the
7 Interior Board of Indian Appeals. Well-established
8 Federal policy encourages respect for tribal self-
9 government, including the right of tribes to
10 interpret their own laws. The Department will
11 defer to a tribe’s interpretation of its own laws.
12 Matters and findings involving the correct
13 interpretation or the validity of tribal law are
14 best left to the courts.

15 DAVID TARLER: Mr. Chairman, I recommend that
16 we proceed to the presentation of the disputes.

17 MERVIN WRIGHT, JR.: Thank you. Thank you,
18 Carla – Ms. Mattix.

19 All right, we’re going to proceed then with
20 the presentation regarding the dispute of the
21 Sealaska Corporation and Wrangell Cooperative
22 Association and the Alaska State Museums. At the
23 top of the list we have Richard Rinehart, Sr., for
24 Sealaska Corporation and Wrangell Cooperative
25 Association.

1 **DISPUTE: SEALASKA CORPORATION & WRANGELL**

2 **COOPERATIVE ASSOCIATION — ALASKA STATE MUSEUM**

3 **PRESENTATION: SEALASKA CORPORATION & WRANGELL**

4 **COOPERATIVE ASSOCIATION**

5 WALTER ECHO-HAWK: Mr. Chairman.

6 MERVIN WRIGHT, JR.: Yes, sir.

7 WALTER ECHO-HAWK: Good morning. My name is
8 Walter Echo-Hawk, and I am attorney for the
9 claimants in this — I am an attorney for the
10 claimants in this matter, and we have a ceremonial
11 presentation that we would like to begin with, if
12 we may. And then our leader of our presenters will
13 introduce the presenters if we may.

14 MERVIN WRIGHT, JR.: Certainly.

15 **CEREMONIAL PRESENTATION**

16 DAVID KATZEEK: (Native Alaskan language.)

17 Noble precious children of the earth, long
18 ago, when we came in a situation like we're coming
19 into, our Elders, our fathers, our grandfathers,
20 our great-grandfathers, and those who have gone
21 before us practiced this tradition. And today
22 we're here to do this in the tradition of our
23 people who have practiced for this not 1,000 years,
24 not 2,000 years, but according to the scientists
25 who study about the people, we've been here on this

1 earth 10,000 years. So this tradition and custom
2 that we're going to do right now is a custom of our
3 people and it is not of one person, but all our
4 people.

5 (Native Alaska language.)

6 (Ceremonial entrance.)

7 DAVID KATZEEK: *Gunalchéesh*.

8 (Native Alaskan language.)

9 Nobel children of the earth, we are honored to
10 be here with you this morning. At this time, we
11 couldn't do the kind of thing that we're doing
12 without our *at.óowu*, so I have asked my father's
13 people from the (Native Alaskan language) to hold
14 this blanket. So I would like to you go ahead and
15 say what we would have said traditionally.

16 CLAN MEMBER: This is not me but my ancestors,
17 my grandmother Margaret Katzeek, (Native Alaskan
18 language), holding this.

19 DAVID KATZEEK: *Gunalchéesh*.

20 CLAN MEMBER: And thank you for the honor.

21 DAVID KATZEEK: *Gunalchéesh*. And my
22 grandfather.

23 CLAN MEMBER: It is not me but it is my great-
24 grandfather (Native Alaskan language) holding this
25 blanket.

1 DAVID KATZEEK: And my great-grandfather.

2 CLAN MEMBER: *Gunalchéesh*. (Native Alaskan
3 language.)

4 DAVID KATZEEK: *Gunalchéesh*.

5 CLAN MEMBER: (Native Alaskan language.)

6 DAVID KATZEEK: *Gunalchéesh*. Thank you. Thank
7 you.

8 A long time ago, and even to this very day,
9 the manner in which we brought out our *at.óowu*,
10 there are a host of Thunderbirds in this blanket, a
11 host. From time immemorial right on down to this
12 very day, the names of these Thunderbirds are in
13 this. My recent sister who died Janice Gagetich
14 (phonetic), her name is in it. Joe White, Frank
15 See (phonetic), and the list goes on with those
16 people who are leaders of our clan and our family
17 are in this. The same goes with respect to this
18 hat. This hat, right here, right now, is in
19 reality to the Teeyhittaan people right now. To
20 hold it up before you that the Thunderbirds are
21 here to stand with you, to uphold you, to
22 acknowledge you as a people who settled the land
23 that we know today as Wrangell.

24 AUDIENCE MEMBERS: *Gunalchéesh*.

25 DAVID KATZEEK: So your clan and your people

1 are represented. We're all related to one another
2 here. And so without any - I just wanted to bring
3 this point out, and the other thing was this, this
4 was not planned, but I don't know how many of you
5 didn't hear the thunder yesterday, but there was
6 thunder in the land. There was thunder in the
7 land, and for us as Thunderbirds that is a very
8 powerful, spiritual type of natural phenomenon. So
9 we're glad that the thunder thundered yesterday.
10 And for you Teeyhittaan people we're like in the
11 dark and the storm, you take a look, the thunder
12 had walked away from here today. Look at the
13 beauty of the sun shining down, may that be the way
14 it is with us being here with you, for we are Sun
15 Children as well.

16 (Native Alaskan language.) This is all I'll
17 say for now, and I'll ask if the blanket could be
18 just put this way to face the - and put the hat -

19 Honorable Chair, Nobel NAGPRA Committee
20 members, I'd like to take this opportunity to have
21 in the record the delegation of those individuals
22 who are here who represent the Tlingit Nation:
23 Kathy Dye, Shangukweidí; Gordon Greenwald,
24 Chookaneidí; Albert Kookesh, Teikweidí, also
25 Senator Albert Kookesh; Julie Williams,

1 Wooshkeetaan; Rosita Worl, Shangukweidí; Harold
 2 Jacobs, Yanyeidí; Sarah Dybdahl, Taakw.aaneidí;
 3 Kenneth Grant, T'akdeintaan; Marlene Johnson,
 4 T'akdeintaan; Richard Rinehart, Sr., Teeyhittaan;
 5 Richard Rinehart, Jr., Kiks.ádi, Teeyhittaan yádi,
 6 Child of the Teeyhittaan.; George Ramos,
 7 Luknax.ádi; Chuck Smythe, Lukaax.ádi; Ron Williams,
 8 T'akdeintaan; Rico Worl, Lukaax.ádi, and Kathryn
 9 Hurtley from the Huna Heritage Foundation. Thank
 10 you very much.

11 Now I'd like to introduce the panel, Walter
 12 Echo-Hawk, Richard Rinehart, Sr., Richard Rinehart,
 13 Jr., George Ramos, Dr. Chuck Smythe, who by the way
 14 is a Lukaax.ádi, the Lukaax.ádi Clan, my grandpa.
 15 He looks a lot younger than me, but he is my
 16 grandpa. And myself, *Kingeisti*, David Katzeek.

17 MERVIN WRIGHT, JR.: Okay. Thank you. Thank
 18 you for your presentation this morning, and so we
 19 will continue, and forgive me for mispronouncing
 20 your names, Mr. Rinehart – we'll start with
 21 Mr. Richard Rinehart, Sr.

22 **WALTER ECHO-HAWK**

23 WALTER ECHO-HAWK: Mr. Chairman, may it please
 24 the committee, the witnesses have asked me as their
 25 legal counsel to go first if I may.

1 MERVIN WRIGHT, JR.: All right.

2 WALTER ECHO-HAWK: Thank you, and for the
3 record, my name is Walter Echo-Hawk, and I am an
4 attorney for the claimants here today, which are
5 the Sealaska Corporation and the Wrangell
6 Cooperative Association, which is a federally
7 recognized Indian tribe, who have filed a claim on
8 behalf of the Teeyhittaan Clan against the Alaska
9 State Museum for the repatriation of one object,
10 that is this Leader of All Raven Hat, which is a
11 clan *at.óowu*, or communal ceremonial property,
12 which the record has indicated there's no dispute
13 as to whether this is an object of cultural
14 patrimony and also a object – a sacred object as
15 well within the meaning of NAGPRA. And the
16 claimants – first of all, Sealaska Corporation is
17 an ANCSA Corporation, and the museum has admitted
18 the cultural affiliation between the Sealaska
19 Corporation and this clan hat and the Teeyhittaan
20 Clan. They – the clan members are also
21 shareholders of the corporation. Similarly, the
22 Wrangell Cooperative Association, which is a
23 federally recognized Indian tribe, is also
24 culturally affiliated for the same reasons, and
25 I'll get into that a little bit later in my

1 presentation. And then of course the Teeyhittaaan
2 Clan is not a federally recognized tribe, but it is
3 the owner of this clan property and this claim is
4 being brought on their behalf.

5 And I'm very glad to be here today, you know,
6 having - even though I live in Oklahoma, I've - in
7 the past I've journeyed to the land of the Tlingit
8 Nation up in Southeast Alaska, and I've been able
9 to travel through that wonderful, awesome land up
10 there where human beings still live in the natural
11 world and have a very powerful cosmology, a
12 hunting, fishing and gathering cosmology, and where
13 the human beings there in that awesome land of
14 glaciers and oceans and marine life with eagles and
15 brown bear, all of the races of salmon, whales,
16 bountiful berries, and the people there have lived
17 there for 10,000 years and evolved over that time a
18 close relationship with all of the animals and
19 plants of that area. And so I found out going up
20 there and getting acquainted with some of the
21 people up there that if you can't be a Tlingit
22 Indian, the next best thing is to be their
23 attorney. And so I'm glad to be here today.

24 What I'd like to do very briefly is to cover
25 three areas for the committee, if I may. First of

1 all, I want to address the very simple issue that
2 is before this committee for resolution. Secondly,
3 I'd like to talk about or summarize the evidence on
4 this issue, if I may. And thirdly, I'd like to
5 address the museum's argument for its right of
6 possession.

7 And before I do that I have a preliminary
8 matter here I'd like to take care of. I had filed
9 — last week on November 11, I filed and served a
10 reply brief that would be the claimant's reply to
11 the museum's response in this matter. We tried to
12 email a copy to the committee members as well. I
13 don't know if you've received it or had a chance to
14 look at it, but at this time I would like to
15 formally distribute this document by way as of a
16 supplement of my oral presentation, if I can. And
17 I will give these copies, if I may, to the DFO and
18 ask if he would be so kind as to deliver these —
19 this brief. And it's got five affidavits or five
20 exhibits attached to it by way of reply to some of
21 the museum arguments. And I'd like to go with —
22 through this briefly in my presentation with you,
23 so I'll give this to the DFO.

24 And also I have two other exhibits today that
25 I'd also like to give to the DFO. These are two

1 additional affidavits that I've brought today that
2 rebut a recent deposition that was taken last week
3 by the museum in Seattle. And these two affidavits
4 are submitted in reply to that deposition. I have
5 not seen the deposition, the final deposition, or
6 the underlying exhibits, but I do want to address
7 my understanding of at least the draft deposition
8 testimony during this presentation. I have a copy
9 of these two affidavits for my opposing counsel
10 here. And I'm sorry, I don't have enough copies of
11 these two affidavits for all of the committee
12 members, but the DFO says that he'll make a copy
13 for each of you.

14 So with that, let me proceed to the - okay,
15 with that, Mr. Chairman, and members of the
16 committee, let me proceed if I may to my first
17 item. What is the issue to be decided this morning
18 or during this week by the Review Committee?
19 Despite the great volume of paper that has been
20 provided to the Review Committee, there's only one
21 issue here, and it's a right of possession issue
22 regarding one object. And basically the question
23 on this right of possession - factual question to
24 be determined by this Committee is this: Did
25 William Paul have the authority of alienation under

1 tribal law as the clan caretaker of this clan hat
2 to convey ownership of that hat to the museum in
3 1969? That's the only factual issue here. To
4 resolve that factual issue, the Committee is going
5 to have to ascertain what was tribal law in 1969,
6 and I'll review that evidence with you shortly.

7 And then secondly, the committee will have to
8 determine whether the museum proved that William
9 Paul had the voluntary consent of the Teeyhittaan
10 Clan to convey that hat in 1969, and there's
11 evidence on that point as well that I'll review
12 with you.

13 So let me begin by summarizing the evidence
14 that is before the committee. First, I want to
15 take a look at the evidence in the record about
16 what was tribal law regarding clan ceremonial
17 property in 1969. In the record that has been
18 presented, there is voluminous evidence about
19 tribal law that has been provided to the committee.
20 This is evidenced by two experts, two
21 anthropologists, Dr. Rosita Worl, who is a very
22 prominent Tlingit anthropologist who has devoted
23 much of her professional career to studying the
24 property law of her people and is considered an
25 expert and has testified in court on that subject

1 in the past. Secondly, we have materials that were
2 prepared by Dr. Smythe, who is also here today with
3 us at the table, who is also an anthropologist with
4 extensive experience in Alaska. These two experts
5 have provided documentation about the nature of
6 Tlingit tribal law in the 20th century, both before
7 1969 when this donation was made to the museum and
8 after 1969. So we can look at – we have evidence
9 in the record of tribal law both before and after
10 that we can take a look at. That evidence shows
11 continuity in the tribal law before 1969 – oh, and
12 the third item in the packet that you should have
13 is my memorandum of law too that sort of tried to
14 distill the evidence in the record on tribal law
15 and present it to you in a summary fashion.

16 As far as the evidence before 1969 when this
17 gift occurred to the museum, there was a very
18 extensive authoritative study of tribal law that
19 was done by Goldschmidt and Haas in 1946. The –
20 Goldschmidt was an anthropologist and Haas was a
21 solicitor for the BIA, and they were looking at
22 Tlingit property law throughout – to try to
23 document tribal law with regard to land ownership.
24 And they went to all of the Tlingit communities,
25 Klukwan, Hoonah, Sitka, Angoon, Juneau, all of

1 them, during one summer of fieldwork, and heard
2 directly from knowledgeable Tlingit informants in
3 1946 spanning an 80-year period from 1946 all the
4 way back to 1866, and getting that first-hand
5 information, this attorney and this anthropologist.
6 And then they – they published a very authoritative
7 publication on that, which is cited in the
8 materials.

9 Secondly, we have before – and this pertains
10 to the law in effect before 1969. Then we have
11 court decisions that are cited in my memorandum
12 that talk about the Tlingit law in the early
13 decades of the 20th century in the Tlingit and Haida
14 v. United States case, which was a Court of Claims
15 case decided in 1959 where the court was looking at
16 Tlingit law and land that was ceded or taken by the
17 United States in the year 1907 and thereafter, and
18 was looking at the nature of Tlingit law during
19 that time frame.

20 We had also evidence or illustration of some
21 of the principals in the clan efforts, particularly
22 of the Teehyittaan Clan in Teehyittaan v. United
23 States in 1955, went all the way to the Supreme
24 Court to protect clan property rights in Tlingit
25 land that was taken before in the early decades

1 there.

2 We have in the record evidence after 1969 in
3 various cases regarding *at.óowu* that is – *at.óowu*
4 is a Tlingit property concept of communal
5 ceremonial property that is well described in the
6 record by Dr. Worl in her materials. And we have
7 some 20th century cases that examine the nature of
8 the Tlingit law pertaining to this ceremonial
9 property, such as the clan hat in this case.
10 Following extensive trials, evidentiary trials from
11 knowledgeable witnesses about the nature of Tlingit
12 law, we have that in the Chilkat case, a tribal
13 court decision, which is an appropriate place that
14 we can defer to to interpret tribal law, the Whale
15 House case. We've seen the decisions in NAGPRA
16 repatriation claims, Notices of Intent to
17 Repatriate in southeast Alaska regarding 20th
18 century takings of ceremonial property that were
19 returned in over 20 cases involving the ceremonial
20 property of 12 of the clans, Tlingit clans.
21 There's 44 Tlingit clans.

22 All of these sources of evidence, both before
23 and after 1969, show continuity in their holdings
24 with regard to four rules in Tlingit property law
25 concerning communal ceremonial property. Those

1 four rules are summarized at pages – page 15 of my
2 opening memorandum brief that you have in your
3 materials. The first rule is this – under Tlingit
4 law both before and after 1969, the first rule is
5 this: the clan is the owner of cultural property
6 when it's communal property, communal tribal
7 property. Secondly, caretakers of that property
8 are merely fiduciaries who care for that property
9 as trustees. They don't own it. They're just
10 fiduciaries or trustees of this communal property.
11 Third, under tribal law, caretakers don't have the
12 authority to alienate that communal property,
13 especially without clan consent. And the fourth
14 rule is that while there are some – very few rare
15 general exceptions to this rule against alienation
16 that do allow the transfer of property within the
17 culture with clan consent, none of those exceptions
18 apply in the facts of this case where you had a
19 clan caretaker that unilaterally gave the hat away,
20 and so – for reasons known only to him and without
21 the consent or knowledge of the clan.

22 So these are – this is the evidence on the
23 nature of Tlingit property in 1969. I would submit
24 to you that this is a – amounts to a preponderance
25 of the evidence. That is, it's more likely than

1 not that these four rules of property obtained at
2 the time William Paul gave the hat to the museum.
3 The museum has tried to fabricate some exceptions
4 to that rule, but we address them in our brief in
5 pages 22 to 24, the opening brief. But simply, no
6 one is above the law. William Paul was a great
7 man, and he was a great man to be sure, but under
8 Tlingit law however great you may be you're not
9 above the law because it applies to all Tlingits
10 alike, including clan leaders, housemasters, and
11 caretakers of clan ceremonial property. No one is
12 above the law. There's no exceptions here.

13 Secondly, it doesn't matter — there's 44
14 clans, and this law applies to all 44 clans. It
15 doesn't matter if they're a large clan or a small
16 clan. The museum has tried to suggest because the
17 Tlingits were among the smaller clans that they
18 have less legal protections than others, but
19 Tlingit law makes no such exception, you know. All
20 of the clans are subject to these legal principals.

21 Thirdly, under tribal law, there's no
22 exceptions for museums. The museum tried to argue
23 that there's some kind of a tribal law exception
24 for museum donations and they tried to characterize
25 this as sort of a gift to a sovereign, but under

1 the facts of this case it sort of stretches the
2 imagination too far.

3 So I think in sum, we do have a preponderance
4 of the evidence here that there is no alienation of
5 clan ceremonial property by anyone and especially
6 without the consent of the clan owner.

7 Let me now proceed briefly to the second
8 issue, the second factual issue: Did William Paul
9 as the caretaker of clan property, this hat, have
10 the authority of alienation in 1969 under trial
11 law? We've seen what those principles are. The
12 facts in this case are basically that William Paul
13 in 1969 signed a donation document giving the hat
14 to the museum. It's sort of a vague document that
15 also named Mr. Richard Rinehart, Sr., as the
16 continuing successor caretaker, and it's kind of
17 confusing to interpret that document. But the
18 salient fact here is that that donation bears only
19 the signature of William Paul. He acted
20 unilaterally, and there's no evidence in the four
21 corners of that document that suggests that he had
22 the consent of the clan. And if we search the
23 title records, there's no evidence that he had the
24 consent or knowledge of the Teeyhittaan Clan to
25 give away their property to the museum.

1 The other evidence that's in the record as I'm
2 presuming that my respected counsel opposing
3 attorney is going to introduce a deposition that
4 was taken last week of William Paul's daughter.
5 And in anticipation of that, that deposition did
6 not establish that fact either. I mean, she was
7 asked in the deposition to name who he may have
8 consulted with within the clan, and he was able -
9 she was only able, and we don't even know if this
10 is first-hand knowledge on her part, but she
11 guessed or speculated that he might have consulted
12 with three people: her mother, which was William
13 Paul's wife, Uncle Louis, and possibly Mr. Rinehart
14 here. But then she later says in the deposition
15 that Uncle Louis was dead in 1969 so we have to
16 take him off the plate. Secondly, Mrs. Paul was
17 not even Tlingit, much less a member of the
18 Teeyhittaan Clan, so whatever consultation she may
19 have had doesn't amount to permission from or
20 consent from the clan. And thirdly, Mr. - she said
21 she thought that - she didn't know if Mr. Richard
22 Rinehart, Sr., here was consulted as the named
23 successor of the caretaker of this hat. His
24 affidavit and his testimony today will say that he
25 was not consulted by Mr. Paul and Mr. Paul did not

1 have his consent as the successor. The other
2 affidavits that we submitted in the record,
3 exhibits 1 through 5 in my reply brief that was
4 just handed out in these two affidavits, contain
5 two other affidavits from Teeyhittaan Elders who
6 also say we were never consulted and we never gave
7 our consent.

8 So the record before you establishes that
9 Mr. Paul acted utterly alone. This was a
10 unilateral gift that he made to the museum for
11 reasons of his own. The museum has speculated as
12 to what he may have been thinking or wanting to try
13 to do. We just simply don't know what his intent
14 was. His daughter, who testified in the
15 deposition, says she don't know what he intended
16 either. But on this record, I think we would have
17 to conclude that this admitted cultural patrimony
18 was conveyed in violation of tribal law by an
19 individual who did not have the authority of
20 alienation.

21 To conclude, I would just like to point out on
22 this deposition that at page 30 of this deposition,
23 should it be introduced, the witness also tries to
24 — and again we don't know if this is first-hand
25 knowledge or hearsay, second- or third-hand

1 knowledge, but she says, there was a potlatch and a
2 big celebration about the transfer of the hat. And
3 I think she was referring to a museum function in
4 Juneau that was held four months later after
5 Mr. Paul donated the hat, and it was reported in
6 the local paper. And the museum is trying to make
7 this into some kind of a tribal ceremony or rite of
8 some kind, Tlingit – but the Teeyhittaan were not
9 involved in that and there's no evidence that they
10 even knew about it. And so the fact of the matter
11 on this record is that the museum did not sustain
12 its burden of proof to establish that it has a
13 right of possession.

14 I've talked too long here, but I just want to
15 point out that none of the museum arguments that
16 are listed in the brief are satisfactory to
17 establish its right of possession. I've already
18 told you what the hard evidence is in the record.
19 The museum brings up a list of – tries to show that
20 there's exceptions to the law, smaller clans have
21 less legal protection than others, that William
22 Paul didn't need the consent of anyone, that's
23 simply not the law. That's simply not the law and
24 no – none of those laws are cited, and they fly in
25 the face of the law that we have provided in the

1 record here.

2 Our memorandum – my memorandum that I
3 presented to you looked at the museum report that
4 was filed in 2008. It gave six reasons to try to
5 establish its right of possession. We've examined
6 all six of those reasons. None of them pass
7 muster. None of them pass muster.

8 And then in their reply brief, that I'm sure
9 counsel will be focusing on when he gets his turn
10 at bat here, contains seven arguments as well.
11 They didn't present any new evidence, and the reply
12 brief that I handed out to you addresses each and
13 every one of those seven arguments and shows quite
14 convincingly that none of them really are
15 satisfactory here. And I don't want to go through
16 all of those, but I do invite you to read my
17 memorandum and also to read my reply brief that was
18 just handed out for you, because I think it will be
19 very helpful to you in really looking at each and
20 every one of those arguments and determining for
21 yourself the merit of those arguments.

22 So with that I'm going to – this concludes my
23 presentation, and I thank you very much. I
24 apologize for taking too long here, but the fact
25 that I had to sort of summarize this in a little

1 bit more detail because even though I filed this
2 reply brief last week, apparently it has not been
3 at least distributed to you by the DFO until I
4 handed it out just now but hopefully you may have
5 gotten a copy by email. I don't know if you had a
6 chance to look at it or not. But with that, I
7 thank you and commend this important matter that's
8 vitally important to the Teeyhittaan people into
9 your good judgment. Thank you.

10 **RICHARD RINEHART, SR.**

11 RICHARD RINEHART, SR.: Thank you, Review
12 Committee. *Gunalchéesh. Gunalchéesh.* My name is
13 Richard Rinehart, Sr. I'm Raven. My Tlingit name
14 is *Yuh-Koog'*. I was born and raised in Wrangell in
15 1926. I lived there all my life, except a few
16 years I was in the Army in World War II out in the
17 Aleutian Islands. And when I come home afterwards,
18 I still stayed in Wrangell. I never moved from
19 there, except visiting different places.

20 My father's name was Harry Rinehart. My
21 mother's name was Jessie Rinehart. I'm a
22 Teeyhittaan from my mother's side. I have three
23 sisters and two brothers, and in 1969 I was 43
24 years old and my sisters were over 50 years old.
25 My brothers were the same as me in their forties.

1 My sisters were – two of them, three of them – the
2 oldest one is gone, but my two sisters are still
3 alive and live in California. They were registered
4 nurses. So we have a good background of education,
5 and they served their people.

6 I'm currently the leader of the Teeyhittaan
7 people of Wrangell. I'm their spokesperson, and
8 they all acknowledge that, and I do a lot of things
9 in other program in Wrangell, under ANB, T and H,
10 legion, whatever. But I am the trustee of the
11 Teeyhittaan Crest Hat.

12 My uncle William Paul, Sr., he never told me
13 that he gifted the crest hat to the museum. He
14 said he put it on loan, because at one time in
15 Wrangell, our small little town didn't have a safe
16 place to put it. We wanted to keep our sacred
17 object at.óowu, our sacred objects of the
18 Teeyhittaan Clan, and it means very much to us, and
19 it's all our hearts very deeply, especially me.

20 The reason they put it in the Alaska State
21 Museum was because of fires that would destroy it,
22 and they figured that would be the safe place to
23 keep it until we could find a place in Wrangell on
24 a safe place to bring it back. And as the trustee
25 of the clan, I'm only the trustee, but the clan

owns the hat, not me. I was given the trustee from William Paul, who also got the trustee from my mother's uncle Charlie Yuh-Koog', who I am named after, Yuh-Koog', of the Teeyhittaan people. It was handed to him as a trustee from my mother's uncle Charlie Yuh-Koog' so he could take care of it when Charlie was gone, and then me from William Paul, so I could take care of it and watch over the sacred object of our people.

And we are of the – there are many clans in Wrangell. We're one of them, under the Stikine Kwan (phonetic). Stikine Kwan has quite a few other clans in that group that surround the harbor in Wrangell, Alaska, Shakes Island, our community house where our Chief Shakes owned and lived, his father and his family, and we all around – had different houses all around the island and in the harbor of Wrangell.

William Paul was my uncle, and he – when he visited Wrangell, he come to my house, I respected him and listened to him, and he talked to me about taking the crest – the trustee of the hat and told me why he put it in the museum on the loan. He never gifted it. He never told me one time at all he gifted it. He never come to that conclusion.

1 He always could find me. He knew where I was
2 because I was involved with the Alaska Native
3 Brotherhood. I was the Grand Secretary for many
4 years, in which he was involved in to make sure
5 that our people were well taken care of and he
6 helped run the ANB to help our people build
7 themselves up. He knew where to keep – he knew I
8 was in the service. He knew where to get hold of
9 me in 1969 when all this came about.

10 Like I said, in many conventions, I learned a
11 lot from all our old Elders that were still alive
12 at that time. Being a Grand Officer is a real
13 privilege. We have Grand Officers that are back
14 here, our Executive Board, we call them, after they
15 serve their term as the Grand President. And I am
16 proud to be one of the Grand Officers of our Grand
17 Camp. We have local camps that are affiliated with
18 Grand Camp. When we go to Grand Camp, they appoint
19 a new president every year or he could run again to
20 be a president of our Grand Camp that consumes all
21 our people. And also in the T and H part of our
22 life, that's another affiliation of our people, and
23 I put a lot of time in that as a delegate for many,
24 many years to help our people.

25 We have different ways of doing it, but we

1 always seem to come to our – where do you belong,
2 and we tell them. We get up, just like, I told you
3 my name is Richard Rinehart. I tell them my Indian
4 name, and I'm from the Bark Tree House People,
5 that's what the Teeyhittaan Clan is, a *hit*
6 (phonetic). A *hit* is a house.

7 And so I can see where William, when he was
8 with me we'd talk about – when he was at my house I
9 took him in. He would come to Wrangell for
10 conventions. He would come to Wrangell because he
11 was a religious man. He took parts in church
12 ceremonies. He took part in our ANB doings. He
13 helped our people very much so. I never say
14 nothing against my uncle William Paul, other than
15 this here part that he never – he told me he loaned
16 it to the museum. He says, don't forget, Richard,
17 that I picked you because you're the one I figured
18 I chose out of the ones that would take care of it,
19 and I know that you would do a real good job of it.
20 And we talked about the crest hat on a loan. And
21 he said when there's time to come back to –

22 (Interruption.)

23 RICHARD RINEHART, SR.: Well, I'm sorry about
24 that. I thought it was the time so I couldn't say
25 anymore. Maybe the guy up there is talking to me

1 too. But anyway William Paul never did tell me
2 that – my uncle, he's my uncle through my mama's
3 side. He never did tell me that he gifted it away.
4 If he did, he would have to have our approval, my
5 approval, my sister's approval. My two sisters are
6 still living. They're in their nineties. They
7 live in the California area.

8 So it's coming down to when I was fishing in
9 Bristol Bay, part of my livelihood was gillnetting
10 there, and I fished up there for 20-some years.
11 And one of these times I was coming home and I
12 thought, well, it was a good time to stop in the
13 Juneau State Museum and see how the crest hat was
14 taken care of because it means a lot to me. I was
15 brought up that way. I'm still the leader in
16 Wrangell. At my age, usually they back off and
17 they still come to me, but I'm active in their –
18 I'm still on the council. I take active part in
19 it, and just like I take active part in our local
20 ANB Camp #4. I'm the treasurer of the local camp;
21 make sure that everything is handled right. And we
22 are doing – we have – not even then, in our
23 council, or anybody, not one person can say, well,
24 this is how it's going to be. It has to be agreed
25 even in our councils today, in our Grand Camps it

1 can't be one person even if he's the President. It
2 has to be the whole community. It has to be the
3 whole Grand Camp. It has to be everybody, not just
4 one person can say, this is how it's going to be.
5 It's not in our Tlingit law.

6 When I was in Bristol Bay, like I said, I was
7 coming home. I thought I would stop in because -
8 travel, well, if I was a traveling man going here
9 and there I'd have to have a lot of money to do
10 that. But I went to Bristol Bay and some - most of
11 the time I fished for the Alaska Packer Company,
12 and they - and when I first started they paid our
13 way up. My brother Al took me there first to train
14 me in (inaudible), and then later on I become a
15 private owner of a boat and I was on my own and I
16 brought my sons there to learn how to fish and take
17 care of things in their life.

18 But when I come back I went in the museum and
19 - looking for the crest hat. I walked in looked
20 all - I donated some money in their kitty, just
21 seen there was one there, and I walked all around
22 the museum looking for my crest hat, and I couldn't
23 find it. I knew what it looked like. So I went up
24 to the lady at the counter and I said, where's the
25 crest hat? She said, who are you? And I told her

1 who I was. I'm Richard Rinehart, Sr. I'm the
2 caretaker of the Teeyhittaan Crest Hat that William
3 Paul loaned to the museum. And she said, oh, it's
4 right over there, and I said, where? In the room
5 where she was and to where the crest hat was is
6 about, oh, maybe 20 feet, I can't remember exactly
7 how the desk was.

8 So I went over and looked at it, and it was in
9 a little box and there was a glass cage in front of
10 it, and all it said was it was a Tlingit Crest Hat.
11 It didn't have no story, and right there it
12 embarrassed me very much. They disgraced it. They
13 never told what it was. They never told where it
14 come from. And all that was there and the story
15 behind it for our people, our *at.óowu*, our sacred
16 object didn't have a story or nothing. It was very
17 badly to – it was very badly presented to the
18 people for history.

19 I could keep on going and going and talk to
20 you about it and just like they were – the story
21 come from when it happened. The Tsimshian Chief or
22 brave went hunting with the Teeyhittaan brave and
23 they went in the woods, and the Tsimshian
24 accidentally, or whatever, killed the Teeyhittaan
25 person or brave or Chief, and they went back to

1 their camp in Lake Bay (phonetic), this is the
2 place they call it. And to show peace instead of
3 war, the Tsimshian Chief put a raft out with cedar
4 bough and eagle down and drifted it up to the
5 Teeyhittaan people. And when the Teeyhittaan Chief
6 seen this he knew what it meant. It was a peace
7 offering, and so he accepted it that way. And
8 that's where our story started and that from there
9 on with other things we have that as our *at.óowu*,
10 sacred object.

11 Many times when I talk about it and people say
12 they give something away that don't belong to them.
13 I'm not trying to degrade my uncle. He was my
14 uncle on my mother's side. I helped him out. He
15 stayed with me. I give him a place to stay, like
16 you're supposed to do. My mother was raised, and
17 my sister – one of my sisters was born in Lake Bay
18 area where this all took place. My mother was – as
19 a child, my uncle Charlie *Yuh-Koog'*, what I'm named
20 after, and her aunt raised her just like they did
21 in the old days as a little girl. She never had
22 dolls when she was a little girl. She had dogs.
23 They went over there to gather food in the
24 summertime, fish, whatever, seaweed, then they take
25 it back to Wrangell, and they distribute with the

1 rest of them. They share so that everybody can
2 have something to share for, and Charlie *Yuh-Koog'*
3 was a great provider that way, my uncle Charlie
4 *Yuh-Koog'* on my mom's side. Like I say I was named
5 after him. I'm very proud of it.

6 And as far as the — how many of us left, just
7 like my lawyer said, it wasn't how big you are as a
8 nation or how small, you're still there and there's
9 still a lot of us. And we keep going. It's just
10 not — it ain't going to die off because I'm going
11 to die off. We have name givings. We have a
12 ceremony for name givings and you adopt them into
13 your clan and you give them an Indian name, just
14 like I transferred mine to my great-great grandson
15 who lives in Juneau. One day he'll know what it's
16 all about. And all the people, our Wrangell
17 people, I'm part of it. We're part of the Stikine
18 Kwan, and they know. Like I say, I am still a
19 leader in Wrangell, no matter — not the Indian
20 only, of the whole town.

21 So when I come back from Juneau — I mean,
22 Bristol Bay and I stopped in Juneau to see this,
23 and I figured, well, we're going to have to bring
24 it back to Wrangell somehow, but we couldn't do
25 that until after we had a place to put it. Right

1 now we do have a beautiful Nolan Center building.
2 There's a beautiful building and our museum is
3 there. It's well taken care of, and we did bring
4 it back to Wrangell on a loan for a ceremony we had
5 there in old Indian ways. And it's kept in a nice
6 big vault where everybody could see it. It's
7 alongside of another – artifacts from Shakes Island
8 and it shows other things in there but it's all
9 locked up. It can never be taken out unless it's –
10 it takes about an hour to unhook it and bring it
11 apart for when you want to use it like myself.

12 I can't understand where I have to borrow it,
13 something that belongs to me and my people. Why do
14 I have to borrow it and get permission from the
15 museum? They say they owned it. They can't own
16 nothing like that. If the museum – all they have
17 to do right to this day is say, yes, it's yours, we
18 believe it. And they know that too, it is yours,
19 but we claim it because William Paul gifted it, and
20 he never did tell me. My uncle never did tell me
21 that. He never did tell my sister. He never told
22 any of our Teeyhittaan Clan that he gifted it away.
23 They knew he loaned it because he talked a lot of
24 them at different places, because we all went to
25 conventions where we communicated with each other.

1 Communication in them days, early days, was a
2 little slower, even by mail and stuff. Everybody
3 knows that. We didn't have computers or
4 calculators or anything. We had boats or we sent
5 mail. And there was communication between me and
6 my uncle by mail. We wrote back and forth, and as
7 far as his daughter is concerned, Frances, I wrote
8 to her and back and forth with her, but that's the
9 only communication I had with her. I never met her
10 in Portland at no time, and she doesn't know that I
11 - she doesn't know that I talked to her father or
12 she doesn't even know that I brought her father
13 into my house for safekeeping so he could have a
14 place to stay and eat while he was visiting
15 Wrangell.

16 So as far as the museum is concerned, all
17 they'd have to do is say yes, this is yours, and
18 sign an affidavit, and if they wanted to borrow it
19 for us for one of their educational programs we'd
20 talk about it or I'd think about it very deeply and
21 then they could ask me. I wouldn't try to refuse
22 and say no. They never said no to me that way for
23 loaning it so I could put it back in Wrangell for
24 display. And I thank you for listening to me. I
25 said, I got only so much time, but it hurts me.

1 Sorry.

2 **RICHARD RINEHART, JR.**

3 RICHARD RINEHART, JR.: *Gunalchéesh*.

4 Mr. Chairman and Review Committee, thank you for
5 letting us speak here today. Some of the things I
6 was going to talk about Walter already covered, so
7 I'll try to be – try to be brief. However, I need
8 to properly introduce myself.

9 (Native Alaskan language), I am Tlingit, and
10 my name is Raven Who Lives Far Away. (Native
11 Alaskan language), I am Raven and Kiks.ádi Clan,
12 (Native Alaskan language), from the Sun House.
13 (Native Alaskan language), I am the child of the
14 Teeyhittaan, (Native Alaskan language), from the
15 Stikine area, the Wrangell area it's known as
16 today, and I say that because as a Teeyhittaan
17 Yádi, I can stand here before you not only with the
18 right to help represent my father's people at their
19 request, but it's an obligation, it's a
20 responsibility that I have to stand up for them and
21 stand strong and be beside them and help them
22 through this whole quest.

23 I have been working with a number of members
24 of the Teeyhittaan Clan throughout this whole
25 process, which really we started, as my dad was

1 talking about, in Bristol Bay back in the seventies
2 on our fishing boat he started telling me about it.
3 And the brief story he told about seeing the hat in
4 the museum was in the 1980s. There's record in the
5 appendix of the information you got of letters back
6 in the 1990s, and I've been involved with this
7 throughout that process until 2003, when I moved to
8 Juneau to work for Sealaska Corporation and then
9 went over to the museum and told them the clan
10 wants their hat back, basically, and that started
11 this whole process.

12 A couple members couldn't be here today from
13 the clan, and they have provided their affidavits,
14 and so I want to give you those affidavits. You
15 heard briefly my father's credentials, and he was a
16 known and respected leader at the time in the
17 1960s. He was Grand Treasurer of the ANB, Alaska
18 Native Brotherhood, and he gave you some of those.

19 The next person that I have an affidavit from
20 is Ethel Lund. Ethel Lund is a former Grand
21 President of the Alaska Native Sisterhood, so she's
22 on the ANS Executive Committee. So she's an
23 Executive Committee woman with ANS. She was the –
24 I don't know that she was the founder, but
25 certainly the builder of Search, our local regional

1 health consortium. She is the long-time President
2 and built it into what it is today. And she was a
3 long-time board member of Sealaska Corporation, so
4 she is a respected Elder of the Tlingit people and
5 the Teeyhittaan Clan. So this is Ethel's
6 affidavit.

7 My name is Ethel Lund, and my Tlingit name is
8 Aan wuu geex. I was born on November 4, 1931, in
9 Wrangell, Alaska. Currently I reside in Juneau,
10 Alaska. I am Tlingit, Teeyhittaan Clan, through my
11 mother Martha Ukas and my grandmother, Josephine
12 Lewis Ukas.

13 During the 1960s, I lived in the Seattle area.
14 My married name was Ethel Comer at the time. I
15 knew William Paul and would visit him on occasion.
16 I moved back to Wrangell in the summer of 1969. On
17 March 10, 1969, I was 37 years old.

18 I do not ever remember William Paul talking
19 about our Teeyhittaan Clan Crest Hat or telling me
20 he had donated or given our Teeyhittaan Clan's
21 Crest Hat to the Alaska State Museum in Juneau.
22 Nor, do I ever remember him asking for my
23 permission or consulting with me, or anyone else in
24 my family on the subject.

25 Dated the 11th of November, 2010. Signed,

Lesa Koscielski Consulting
Rapid City, South Dakota
(605) 342-3298

1 Ethel Lund. Notarized by Charlotte Stock.

2 Ethel, like I say, I had been corresponding
3 and dealing with throughout this whole process in
4 everything that we have been doing with this claim.

5 Another family of the Teeyhittaan Clan are the
6 O'Garas, and they descend through Tillie Paul
7 Tamaree. William Paul's mother was remarried after
8 her first husband died and had children through the
9 Tamarees, and that's what Debra and the O'Garas
10 come from. This is the affidavit of Debra O'Gara.

11 I am Debra S. O'Gara. My Tlingit name is *Djik*
12 *Sook*. I was born on October 11, 1957, and
13 currently reside in Juneau, Alaska. I am Tlingit,
14 Teeyhittaan Clan. My mother is Carol O'Gara
15 (Sheppard), Tlingit Teeyhittaan Clan. Her mother
16 was Frances Bette Sheppard (Tamaree), Tlingit
17 Teeyhittaan Clan, and her mother was Matilda
18 (Tillie) Paul Tamaree, Tlingit Teeyhittaan Clan.

19 My mother was born on September 5, 1940, in
20 Alaska. She was 29 years old in 1969 and living in
21 the Seattle area. Her sister is Joan Baijot
22 (Sheppard), who is also Tlingit of the Teeyhittaan
23 Clan, and was born on March 6, 1938, in Alaska.
24 She was 31 years old in 1969 and living in the
25 Seattle area.

1 I recently spoke with both my mother, Carol,
2 and my aunt, Joan, and asked them if they
3 remembered William Paul, Sr., telling them or
4 announcing that he was giving the Teeyhittaan Hat
5 to Alaska Museum. Both of them told me they do not
6 recall William Paul, Sr., talking to either of them
7 or making an announcement about donating or gifting
8 the Teeyhittaan Clan Hat to the State of Alaska or
9 to the State Museum.

10 Dated this 15th of November, 2010. Signed
11 Debra S. O'Gara. Notarized by Marilyn Peratrovich.

12 There were some other things I was going to
13 say that basically counsel had covered, but just
14 briefly to add just a little bit to it. My father
15 was saying on his relation with William Paul and
16 how it goes back, and I can tell you just some
17 things that I know about. As he said, he was a
18 Tlingit and Haida delegate, my father was. And in
19 the 1960s, Tlingit and Haida accepted a settlement
20 claim from the United States Government for seven
21 and a half million dollars on a seventy – almost
22 eighty million dollar claim that was filed at the
23 time. And all the delegates, there was like a
24 hundred delegates voted in favor. Three voted
25 against. They were all from Wrangell. My dad was

1 one of those. Why did they vote against? They
2 voted against because William Paul advised them to
3 vote against it because he had said it wasn't
4 enough money for the loss of fishing rights.
5 That's the kind of relation my dad had with William
6 Paul.

7 Another time I recall when I was very young, I
8 was in the ANB Hall, which was much like this
9 building here, just a stage like you have there and
10 on the sides there was balconies. It was smaller
11 than this, though. And there was a meeting in
12 Wrangell, and I was up in the balcony watching as a
13 kid, and all the people in Wrangell were standing
14 on one side and my dad and his brother Lloyd were
15 standing on the other side. And they were standing
16 on the other side because the people then voted.
17 They – when they were deciding to join the lawsuit
18 against the United States, most people believed
19 that we should go as one. William Paul believed,
20 and he fought this in the Supreme Court case, that
21 we should go as clans as the way we were in the
22 1860s. And my father and his brother Lloyd
23 followed what their uncle William told them, and
24 they stood up for what they believed in. They
25 stood on one side of this gymnasium of this room,

1 when my mother's family and everybody else in the
2 town stood on the other side. And they did that
3 because they believed what their uncle Will told
4 them.

5 So my dad had a very strong, close
6 relationship with his uncle Will. They talked
7 about this. They knew about this and so what he's
8 telling you, William Paul stayed at our house when
9 I was a kid. They used to argue land claim
10 arguments in our kitchen. These kind of things
11 happened. They had a close relationship as an
12 uncle and nephew that he passed on the custodian,
13 next trustee to, and if he would have talked to
14 anyone, you would think he would have certainly
15 talked to his nephew, his nephew that was the next
16 person in line, and he didn't. They always thought
17 it was on loan, so that's all I'm going to say on
18 that. Thank you.

19 **GEORGE RAMOS**

20 GEORGE RAMOS: Thank you, Committee. I'm from
21 Yakutat, a small village. My name is
22 Woochjax_xooeesh. I am of the Luknax_x.ádi Clan from
23 the Frog House. That's how you introduce yourself
24 — so I have a little difficulty with my throat this
25 morning.

1 I am – first name was *Woochjaxooeesh*, and also
2 I am the Silver Salmon Clan. It was just by chance
3 that I went to my uncle's house, which was the
4 traditional way you grow up. Between the age of
5 six and seven, your family sends you to your uncle.
6 He is responsible for your strength, mental being,
7 endurance. How do they do it, and how do they
8 instill this for the caretaking of the artifact?
9 In the morning, first thing you do is you go down
10 and sit in the water, whichever water is close, and
11 they used to tell me that from one area there used
12 to be very strong men that come down, the Dry Bay.
13 It wasn't until I fished in the Dry Bay I felt that
14 water, and your hands would curl up from the cold.
15 So I finally went to Forest Service one day and I
16 asked them how cold is that water, and he says it's
17 37 degrees. My uncle used to tell me how the boys
18 would get into this water, sit there, start shaking
19 and sometimes pass out.

20 How did they instill these things in you? I
21 used to think about how when you're seven, eight
22 years old they start telling you the stories of the
23 laws, the Tlingit laws. They're very harsh. Some
24 of them mean death. You don't go into anybody
25 else's land until you have made arrangement and

1 been invited. The young people that are growing up
2 grow in a set of threes. One uses the armor, which
3 I was very short and I was very fortunate to see
4 because I used to wonder about it, even in my – the
5 older days when they talk about you put the armor
6 on and you train, the strongest men trained with
7 armor. The armor signifies your crest. You learn
8 all about your crest from the time you're small,
9 until you're married into manhood, and this is all
10 the training of the Elders. I call it the training
11 of 8/80; when you're 8 years old, you're in this
12 school and your instructors are 80 years old. And
13 it's just by accident that I came into this because
14 my mother had a problem with alcohol, and she said
15 you go to your uncle.

16 So these laws are passed on. In the evening
17 time you sit down and the uncle will come out and
18 he'll start telling you the stories, the history of
19 your people, the history of your crest that you
20 carry with you all the time. One, it's always my
21 top here, it's the Raven Clan, and the Silver
22 Salmon on one side and on the other side is the
23 Frog, which means I come from the Frog House. All
24 of these things that I tell you are crests. What
25 difference is it when our crest, as I'm a retired

1 soldier, is the American flag. It set there. It's
2 not much different than the feeling you develop for
3 your crest. You will die for your crest. And some
4 of these hats that is carved like you see here,
5 that is part of our crest.

6 From time immemorial - I always think it's
7 funny that they give you five minutes to testify at
8 a hearing, and I can take you back a thousand years
9 from the time the glacier receded from the Gulf of
10 Alaska, and it's now in my home 35 miles back with
11 an inlet to the mountain. It's receded that far.
12 I can tell you the story about the world's biggest
13 glacier. All of these things were instilled in you
14 by the stories, the parables of the Raven creating
15 our world. Everything has a name, everything has a
16 spirit in our world. It is really strange. And I
17 have been working the last 20 years with young
18 people, 20 years before that I worked with men,
19 young boys, young ladies coming into the military.
20 So it was really something for me to try to figure
21 out how do you instill the pride, the self-esteem
22 back into people who were under the Russians. The
23 Russians were taking your children and said they
24 were going to instill - teach them the culture of
25 the Russians and send them back. They never came

1 back. The Russians put dams in our rivers so the
2 fish couldn't come up to our area. How do you
3 instill pride in an area where the sign says, No
4 Natives or dogs allowed. And later on they added
5 Filipinos. It's really something. How do you
6 instill pride in young people who the Governor in
7 Alaska in 1904 said you will not have any more of
8 your potlatches. You will have no more of your
9 dances. And they cut the totem poles down in some
10 areas because they said we were praying to them.
11 No, they are a story pole of our inheritance and
12 our culture.

13 How do you instill pride and self-esteem into
14 young people who the Bureau of Indian Affairs says
15 you will not talk your language? I happened to
16 speak my language from the time I was small, and I
17 too, like a lot of the people in Southeast, a lot
18 of the people across the United States, were
19 punished, whipped, disciplined, finally — from 1904
20 until 1955 when five of our Elders got together and
21 said enough. It is enough that the missionaries
22 came and told us we couldn't do these things and
23 the Bureau of Indian Affairs says we could not
24 speak our language, and so it was picked up by
25 Sheldon Jackson School, Piacks Mission (phonetic),

1 all the orphans couldn't speak their language. We
2 nearly lost. We nearly lost.

3 And now we are still fighting for our way of
4 life as the men across the United States fought,
5 starting with Crazy Horse, starting with Red Cloud,
6 starting with Cochise, starting with Sitting Bull,
7 and last to fall, Chief Joseph. They were fighting
8 for their way of life. They were fighting for
9 their food and most of all, like the Tlingit, when
10 you are a warrior you carry a double-bladed knife.
11 It's called a guaxaw (phonetic). That was your
12 (inaudible). If you're the strongest men in the
13 group, you are trained with the armor, which I was
14 so glad to see up at Harvard because I used to
15 think about the layers and how much did it weigh
16 and all this. After you retire from that, you are
17 given a knife. It's got your crest on there. And
18 it's a blade. It's the first thing you put on.
19 That's like my leadership cord. And it's the last
20 thing you take off at night, and you lay it so that
21 you can reach and grab it and defend your people,
22 your way of life.

23 This is what the uncle instilled in a young
24 man, starting at six years old until he reaches
25 manhood and marries. That's how it's instilled,

1 that your pride, your self-esteem are in these
2 things, and he tells you of the blanket, the
3 blanket – some of them show our ownership. One of
4 the most beautiful one I seen is my grandfather's
5 people when they migrating up the coast of Alaska
6 toward our area, they saw a light way up above and
7 they kept going. They started in Tongass
8 (phonetic) below Ketchikan, and when they reach
9 this light – it was called Mount Edgecombe now – it
10 was still a volcano, and I used to wonder when did
11 it happen when I was a small boy around the fire.
12 When did that happen? Finally I picked up the
13 telephone, I called the Park Service and said – and
14 I asked, when's the last time Mount Edgecombe blew
15 its top? And she told me 950 years ago. I had it.
16 I knew when my grandfather's people, the Brown Bear
17 Clan, was coming up the coast. I was proud of
18 that, and this pride I tried to instill in these
19 young people for the last 20 years because we dance
20 our cultural dances, our history is in our dances
21 and our songs. So I think my five minutes is up.
22 Thank you very much.

23 CHUCK SMYTHE: Mr. Chairman, I yield to
24 Mr. Katzeek.

25 **DAVID KATZEEK**

1 DAVID KATZEEK: Could you hear me?

2 (Native Alaskan language.) Most noble
3 precious children of the earth, thank you for the
4 time that you have given to us this day.

5 (Native Alaskan language.) We spoke about our
6 *at.óowu*, not *at.ow* or *at.ee* but *at.óowu*. *At.óowu*
7 means "that which was paid for," paid for with our
8 lives, paid for with our resources, paid for with
9 our land. We are connected with what we have here.
10 This hat that was brought here before you does not
11 have just David Katzeek's name on it. When the hat
12 is brought out, you will hear names, like (Native
13 Alaskan individual names).

14 When our hats are brought out, it's not for a
15 show. It's not for any kind of thing but an icon
16 to represent who we are as a people and every
17 person who is named into this particular object,
18 both great and small. Not just the President, the
19 Chairman, the tribal leader, but the least among
20 our people are in this hat. The land, the name of
21 the land, the river, the name of the river, the
22 song, the song and how it's used, the name of every
23 person.

24 I'm here to finish off saying what I need to
25 say because it is — when we're talked about as

1 Native American people, we're always talked about
2 as if we were no longer; this is the way they were.
3 This is the way we are right now. We're not dead.
4 We're here speaking in behalf of our families.
5 We're here speaking because as my uncles-in-law
6 said, the children, you can take everything away
7 from us. You can take everything away from us, but
8 we will always have in us who we are, where we came
9 from. You're not going to hear a museum, you're
10 not going to hear an institution stand up and say,
11 this is in memory of so and so and in so and so,
12 when they did this and when they did that, when
13 they had a hard time, when they were struggling and
14 there was nowhere to turn, these individuals stood
15 there. You're not going to hear a museum say that.

16 And there is no one human being who can
17 alienate that from another human being. It cannot
18 be taken away. There is no legal document that can
19 break the lock. Just because someone signed
20 something and said it was theirs, does not mean
21 that it's theirs. We have lost - you call it
22 protection of exploitation, fraud and oppression.
23 We have the same law. We have the same law. It
24 applies equally across the board.

25 If I sounded emotional, that's because I am,

1 because we are alive and well. The schools are
2 full in Alaska, Juneau, Alaska, with Native and
3 non-Native, Asians, and others speaking our
4 language, singing our songs, dancing in the
5 schools, teachers are doing the same things because
6 there are values that a people who have lived on
7 this earth 10,000 years that have kept us here.
8 And so no one institution or one human being can
9 alienate that which represents us and you can't
10 hold it hostage. You cannot hold it hostage.

11 So thank you very much. I apologize if - for
12 being emotional, but I don't know where else I
13 could be. This is a spiritual object. This is an
14 object that we use. The word "object" is a very,
15 very weak word in the English language. (Native
16 Alaskan language.) I'm sorry, the only other word
17 that I could use is that it is a holy object, an
18 object set aside for a very precious, very special,
19 very unique occasion. That is what holiness is;
20 something specifically, specifically designed for
21 use. And today I apologize to the Teeyhittaan
22 people, a long time ago your people would have had
23 your hat right now saying we want to balance what
24 you're doing. But because somebody else has your
25 hat, you could not do that today. So this is the

1 reason we're here. Thank you very much. I wasn't
2 going to talk very long, but I appreciate the time
3 that you've given us. *Gunalchéesh*. (Native
4 Alaskan language.)

5 **RICHARD RINEHART, JR.**

6 RICHARD RINEHART, JR.: Mr. Chairman, I need to
7 respond for the Ravens. In Tlingit culture, I have
8 to balance out my Eagle brother-in-law's statement.
9 As he said, the *Yéil Aan Kaawu Naa S'aaxw*, the
10 Leader of All Ravens Hat, should be here to balance
11 it out. And as he – as we've been talking about,
12 this hat is – it's the object that we're talking
13 about, the one hat, but it's not just one hat, and
14 to call it a hat isn't even really a proper name
15 for it. The hats are used in our Kuwaiks
16 (phonetic), when there's a mourning ceremony and
17 somebody passes, and they're also used when
18 peoples' names are brought out in ceremonies for
19 the young people. In Tlingit culture, we have a
20 thing called *haa shagoon*. It's everything in the
21 past, everything in the present, and everything in
22 the future, and it binds us all together from
23 ancestors into children that are not yet born
24 today. And all those names and all those spirits
25 live and reside in the Teeyhittaan Clan Crest Hat.

1 It belongs to the clan, it belongs to the people,
2 it belongs to the children that are not yet born,
3 it belongs to our ancestors, and we want it back.

4 DAVID KATZEEK: *Gunalchéesh*. Thank you.

5 WALTER ECHO-HAWK: I'd like to thank you for
6 your time and kind attention, and we have one other
7 presenter here.

8 **HAROLD JACOBS**

9 HAROLD JACOBS: *Gunalchéesh*. My name is Harold
10 Jacobs. Not only am I the Cultural Resource
11 Specialist for the Central Council of Tlingit and
12 Haida Indian Tribes of Alaska, I am also the
13 caretaker of this clan's Wolf hat, my clan, the
14 Yanyeidí. This was the very first hat that was
15 repatriated to the Tlingit. It was also the very
16 first object repatriated. It was repatriated
17 because it is a clan object. It is owned by a
18 community.

19 From the time I was little and growing up, I
20 was always told it was a shame not to have your
21 clan's hat, if you didn't have a hat to bring out.
22 And for many years my clan could really not speak
23 at ceremonies because we did not have our hat with
24 us. And once we got our hat back, we were able to
25 participate again because we could show who we

1 were. This is who we are, and I'm just the
2 caretaker. I am not the owner. And for the person
3 who sold it, it was no different to us than the
4 President selling the paintings out of the White
5 House and the furniture. He's just the caretaker,
6 and eventually another caretaker will come along.

7 Quickly there is a song that says the Raven
8 goes towards his Wolf, and right now our Wolf hat
9 is waiting for his Raven hat to come back.

10 DAVID KATZEEK: *Gunalchéesh.*

11 RICHARD RINEHART, JR.: *Gunalchéesh.*

12 WALTER JACOBS: *Gunalchéesh.*

13 **WALTER ECHO-HAWK**

14 WALTER ECHO-HAWK: Thank you. This concludes
15 our presentation. And I'd just like to make two
16 quick points to finish off on not quite as a
17 powerful note as our previous speakers, but two
18 quick points. One of the arguments that are made
19 in the museum's brief is that this dispute should
20 not proceed because of a standing problem, that the
21 Sealaska Corporation does not have legal standing
22 under the NAGPRA statute to pursue a claim as an
23 ANCSA Corporation. And I would just submit that
24 that seems to be a purely legal argument that might
25 not properly be before this Review Committee as a

1 pure question of law. But I don't think we even
2 have to — we can resolve this dispute without even
3 having to reach the standing issue because we do
4 have a federally recognized tribe in the Wrangell
5 Cooperative Association that is a co-claimant and a
6 party to this dispute. And the cultural
7 affiliation of that Indian tribe is demonstrated by
8 Exhibits 1 and 2 to my reply brief that was handed
9 out to you.

10 And then finally, I just apologize to the
11 Review Committee. I have some irritating typos in
12 the review — my reply brief that was handed out
13 this morning, and I'd just like to correct, make a
14 couple corrections on that, on pages 6 and 14 of
15 that document, the — wherever it says Exhibit 3
16 should read Exhibit 5. There's a number of other
17 irritating typos but I won't take up time pointing
18 those out to you, but with that I think that
19 concludes our presentation and I — with all of the
20 respect to my Elders here, my clients, we thank you
21 and thank you very much.

22 MERVIN WRIGHT, JR.: Thank you. We will — I
23 guess just at this point excuse the witnesses for
24 the Sealaska and Wrangell Cooperative Association.

25 KENNETH GRANT: Mr. Chairman?

1 MERVIN WRIGHT, JR.: Yes.

2 KENNETH GRANT: Could we take a couple of
3 minutes to respond to the Eagles here? It won't
4 take long.

5 MERVIN WRIGHT, JR.: Okay.

6 **KENNETH GRANT**

7 KENNETH GRANT: I want the Ravens to come and
8 stand with me. George, too.

9 In our culture, when the hats are brought out
10 and when words are spoken by the opposite clan, we
11 as Ravens have to respond to the Eagles. We have
12 to balance.

13 (Native Alaskan language.)

14 Thank you. We just had to balance what went
15 on here with words. We don't have our regalia with
16 us, but I said that it's as if we're holding it
17 here in front of them. Thank you very much.

18 MERVIN WRIGHT, JR.: Go ahead.

19 DAVID TARLER: Mr. Chairman, I recommend that
20 we take a five-minute break.

21 MERVIN WRIGHT, JR.: Yes, I was just going to
22 say, five-minute break, take a five-minute break.
23 Thank you.

24 **BREAK**

25 MERVIN WRIGHT, JR.: We are going to reconvene

1 our meeting, and so I think as the committee
2 members make their way back to the table, we'll
3 just do our best to continue. Certainly the
4 testimony is on the record, and I was just given a
5 note that Mr. Echo-Hawk, you would like to make a
6 short statement prior to the Alaska State Museum's
7 testimony. So you're welcome to step up to the
8 microphone and make your statement.

9 **COMMENTS IN RESPONSE TO MATERIALS BEING PRESENTED**

10 **BY ALASKA STATE MUSEUM**

11 WALTER ECHO-HAWK: Mr. Chairman and members of
12 the committee, I'd like to raise an objection at
13 this time before we view the — as I understand it,
14 the intent of the State is to show a video, a video
15 of this deposition that was taken last week or
16 excerpts of this deposition, in other words, just
17 showing only a part of the deposition. And I would
18 like to object to that at this time because this
19 was a two-hour deposition and we have a transcript
20 here of the deposition that could be entered into
21 the record, and that way you would be able to see
22 the entire deposition, not just selected excerpts
23 of it, and we would object to showing just a few
24 excerpts of this deposition because I think you
25 would need to see the entirety of the document and

1 the entirety of the testimony rather than just one
2 or two excerpts from it.

3 And so I therefore object to this as being
4 misrepresentative of the testimony, and I would
5 request that in lieu of the videotape or videotape
6 excerpts, that the State just simply introduce the
7 written transcript so that you can see the totality
8 of it, and we can look at the words that were
9 actually said. Otherwise, we would be sitting
10 here, have to sit here for two hours and watch this
11 entire deposition in order to see how the entire
12 affair went. Thank you.

13 MERVIN WRIGHT, JR.: Ms. Mattix.

14 CARLA MATTIX: I just want to remind the
15 audience and the Review Committee, this is an
16 informal forum. And I appreciate Walter's point;
17 however, we're not in a court of law. Terms like
18 "objections" and "evidentiary testimony," those are
19 more along the lines of terms we hear in court, and
20 this is a much more informal session. It is
21 certainly your prerogative to determine how to best
22 use the committee's time and listen to the issues
23 in the dispute, but I just wanted to point out that
24 we don't have those formal mechanisms in this
25 proceeding, like objections, or even the terms

1 "depositions" and things like that, they're much
2 more formal and they're processes that would be
3 used in a court of law and not necessarily in this
4 forum.

5 WALTER ECHO-HAWK: If I may respond, I was
6 addressing my remarks to the committee, not to
7 counsel here. But in any event, if my objection is
8 overruled then I - by the committee then in
9 fairness I would like the opportunity to respond to
10 the videotape based on the actual testimony that
11 was given, the totality of the testimony.

12 MERVIN WRIGHT, JR.: All right. Thank you.
13 Ms. Mattix, I certainly appreciate, you know, the
14 clarification that this is an informal process.
15 The witnesses certainly prepared to testify here in
16 this committee forum and when there are procedural
17 actions that are being taken to prepare and, you
18 know, noting that sometimes these procedures are
19 submitted as part of testimony in the more formal
20 court setting, these - certainly the testimony is
21 not taken - at least I don't consider it to be
22 taken lightly by the committee. So Mr. Echo-Hawk's
23 objection began to make it feel like this was a
24 more formal procedure, but acknowledging your
25 statement and the purpose for what we are here to

1 do, we're going to move forward and allow the
2 Alaska State Museum to testify.

3 DAN MONROE: Mr. Chair, will we have access -
4 will we have access to the full transcript?

5 NEIL SLOTNICK: Mr. Chairman, if I might, Neil
6 Slotnick from the Alaska State Museum, yes, in
7 fact, this morning one of the first things that I
8 did was I provided Mr. Tarler with a full copy of a
9 deposition transcript to distribute to the whole
10 committee. I apologize that I'm only able to show
11 you excerpts here today in our presentation, but
12 because of time limits we did have to edit it in
13 order to show you the video. But for purposes of
14 completeness, we have already provided Mr. Tarler
15 with a copy of the full transcript.

16 DAN MONROE: And have we - do we have that
17 transcript?

18 DAVID TARLER: It's being photocopied right
19 now, and you will have it before the end of this
20 presentation.

21 DAN MONROE: Thank you.

22 MERVIN WRIGHT, JR.: Okay. I'll turn it over
23 to the Alaska State Museum representatives.

24 **PRESENTATION: ALASKA STATE MUSEUM**

25 **ROBERT BANGHART**

1 ROBERT BANGHART: Thank you very much,
2 Committee. My name is Bob Banghart. I am the
3 Chief Curator of the Alaska State Museum, and thank
4 you for this opportunity to speak to you on this
5 issue. I'll be very brief. I'd just like to say
6 that we welcome your jurist minds, if you will put
7 it that way. We hope we can work through this
8 issue equitably for all parties involved.

9 We would like to begin this with an apology in
10 advance for anything we may say that may be
11 offensive or take offense – someone may take
12 offense of it at this point. But we will put the
13 case before you as we see it and hopefully your job
14 will be clear in how you'll be determining it.
15 Thank you.

16 **NEIL SLOTNICK**

17 NEIL SLOTNICK: Thank you. I'm Neil Slotnick.
18 I'm an Assistant Attorney General for the State of
19 Alaska, and I'm here representing the Alaska State
20 Museum. And I want to thank the committee for
21 giving us this opportunity to tell you about the
22 Teeyhittaan Crest Hat, which you see on display
23 there, that is in the museum's collection, and
24 about the man who donated it to the museum, William
25 Paul. And we agree that this crest hat is an

1 object of cultural patrimony. It's what the
2 Tlingit call *at.óowu*. It is sacred property. And
3 the clan has never given up its right to use this
4 hat. It's never given up its ownership of the
5 crest, of the image, of the stories, the history,
6 the lore of this hat. What the clan did do through
7 its Chief William Louis Paul, in 1969, is it made
8 sure that this hat would be protected and preserved
9 in Alaska for future generations, future clan
10 members to use, to control, to learn about, to
11 teach about, and to respect their ancestors. And
12 he did that by placing this hat in the permanent
13 collection of the Alaska State Museums.

14 And in very many ways, this proceeding is
15 about William Louis Paul and his authority to make
16 this donation on behalf of the clan. And I'm going
17 to spend some time today discussing William Paul,
18 and how he is worthy of your respect and
19 admiration. And we're going to hear extensively
20 from William Paul's daughter, Frances Paul
21 DeGermain. She's going to tell us about the
22 history of the hat, and she's going to tell us
23 about her father, the reasons that he made this
24 donation, and why it is that he had the authority
25 to make it. And we're going to ask this committee

1 to work with us and to work with us so that we can
2 reach a result that respects and honors Mr. Paul
3 and respects and honors Tlingit traditions and
4 current clan members.

5 Now, let me tell you a little bit about
6 William Paul. He was the first Alaska Native to be
7 elected to the Territorial Legislature. He was
8 also a very proud member of the Alaska Native
9 Brotherhood. He was a leader of this organization.
10 He was the Grand Secretary for many, many years.
11 And he influenced and changed the philosophy of
12 this organization. Under his leadership, the
13 Alaska Native Brotherhood first promoted Native
14 rights, first promoted preserving Alaska Native
15 heritage. This was a change from how it had been
16 run before, because the previous philosophy of
17 accommodation and assimilation actually was
18 permitting the destruction of Alaska Native
19 culture.

20 William Paul became an attorney in 1920, and
21 he was one of the — he was the foremost activist
22 for Native civil rights in the Territory of Alaska.
23 His activism actually went beyond legal issues and
24 civil rights. He worked for and achieved benefits
25 for his people in the area of health, pensions,

1 employments. And let me read you what Sealaska's
2 Dr. Worl said about William Paul in a 2007 email
3 that she sent to Frances Paul DeGermain:

4 In my years of teaching, I have consistently
5 told students that they must know this name,
6 William L. Paul, Sr., and recognize him as the
7 father of Alaska Native land claims and as the
8 champion of Alaska Native civil rights. I honor
9 his work and contributions, and I am privileged to
10 have known this great man. I am keenly aware of
11 the sacrifices he and his family made on our
12 behalf. We Natives owe him a debt of gratitude.
13 Rosita.

14 Now, as a lawyer myself, I have a tremendous
15 amount of respect for William Paul. This case that
16 I've put up here on the board, this is a United
17 States Supreme Court case, and it's called Tee-Hit-
18 Ton Indians v. the United States, and William Paul
19 was the attorney that originated this case and he
20 also was the only witness that testified, and this
21 is a copy of his testimony that he gave to the
22 Court of Claims, which is where this case began.
23 In 1952, he gave this deposition here in
24 Washington, DC, and the court, the United States
25 Supreme Court recognizes that he was qualified as

1 an expert in Tlingit law and traditions and they
2 cite to his testimony and quote from it. Now, he
3 did not prevail but as Dr. Worl said, many
4 historians have credited his work as the reason
5 that the eventual Alaska Land Claims Settlement
6 occurred.

7 Now as I also said, he did not just work on
8 legal issues. He worked extensively on cultural
9 issues to preserve – he worked hard to preserve
10 Tlingit culture, the hats, the totems, the regalia,
11 the stories, the customs. That was a major focus
12 of his life. Now I am going to play you some
13 excerpts from the deposition that I took of William
14 Paul's daughter Frances. This occurred in Seattle.
15 I'm sorry that she couldn't be here today, but she
16 chose not to make the journey across the country.
17 And Sealaska attended this deposition, and in fact
18 on the tape, you'll hear my voice and you'll hear
19 the voice of the Sealaska attorney who attended and
20 asked questions. And of course, because of time
21 constraints we cannot play the entire tape.

22 But I think that these excerpts will help give
23 you a sense of how Frances, how important it is to
24 Frances and to the Paul family to preserve this
25 Teeyhittaan hat. And to help you make sense out of

1 Frances's testimony, I should tell you that she is
2 working on several different books and she will
3 hold up those manuscripts. One is a book that was
4 written by her father William Paul. It's a book
5 about Tlingit history, which he was an expert in.
6 She's also - there's a book written by her mother.
7 There is a book written by her grandmother, and she
8 has those manuscripts in front of her as she's
9 giving this testimony. So let me play now the
10 first excerpt.

11 [VIDEO PLAYED]

12 [Clip]

13 COURT REPORTER: Raise your right hand. Do you
14 solemnly swear the testimony you offer in this
15 matter be the truth, the whole truth, and nothing
16 but the truth, so help you God?

17 FRANCES PAUL DeGERMAIN: Yes, I do.

18 COURT REPORTER: Thank you.

19 NEIL SLOTNICK: Ms. DeGermain, could you please
20 state your name and address for the record?

21 FRANCES PAUL DeGERMAIN: Well, you've already
22 given my address. My name is Frances Paul
23 DeGermain. My Tlingit name is *Shah-nah-Xee Nahn-*
24 *ya-ahyi*. I belong to the Wolf Clan, Shgut'quon
25 Federation of the Tlingit Nation.

1 I was born in 1924 in Ketchikan, Alaska, where
2 my father was practicing law. My mother worked as
3 his secretary and general this and that.

4 [Clip]

5 FRANCES PAUL DeGERMAIN: My family – my father
6 was a frustrated opera singer, so when it was
7 decided that I could sing, my parents sent me back
8 to Rochester, New York, and I was – and I had been
9 accepted by the Eastern School of Music under the
10 University of Rochester, and I stayed there and
11 became a singer.

12 [Clip]

13 FRANCES PAUL DeGERMAIN: My parents' social
14 work evolved around the Presbyterian Church
15 entirely. In those days, for a long time
16 afterwards, racism was rampant, and my parents
17 worked hard in the church and really didn't notice
18 it, but the children noticed it. My brothers
19 noticed it, my – and I noticed that – the racism.
20 But that's the way it was.

21 Now, who was my father? His name was – his
22 Native name was Shquindy Tee-hit-ton of the
23 Shgut'quon Federation of the Tlingit Nation. He
24 was born on May 7th in 1885, and he died on
25 March 4th, 1977. He was of the warrior class, and

1 he was a warrior.

2 There's that picture of him here. Well, in
3 his football uniform at Whitworth College. And
4 talk about attitude. But anyway, he was needed.

5 My grandmother was a social worker, I guess
6 you could call her, and teacher and a preacher for
7 the Presbyterian Church all her life from the time
8 she was about, oh, twelve. She was – had been
9 rescued from a disastrous marriage, and she went
10 into a home for girls in the Presbyterian Church,
11 and from there she spent the rest of her life
12 working in the Presbyterian Church.

13 NEIL SLOTNICK: You're talking about your
14 paternal grandmother. That would be William Paul's
15 –

16 FRANCES PAUL DeGERMAIN: My father's mother.
17 She was very religious. She believed in God. She
18 and her second husband, William Tamaree, were
19 reared in the old custom way. They understood the
20 old – the old language. They understood the
21 protocol. They understood how things were done.
22 When my father came back to Alaska in – to live in
23 1920 – resulted in his living in 1920, that is – he
24 realized that he had to stay for his – the sake of
25 his people.

1 The ANB, Alaska Native Brotherhood, was
2 already organized, but they had required that
3 everybody speak English at their meetings. Dad
4 knew that shouldn't happen. They had to get the -
5 they had to talk to the elderly people, so he
6 changed the thing and said that you're - you can
7 speak Tlingit, which meant he had to revise - that
8 is, relearn - his Tlingit, and he did, because he
9 did a lot of traveling, and as he traveled, he
10 spoke with people. He asked them, who are you, who
11 are your relatives, what is your tribe, tell me
12 some stories, and he wrote these things down.

13 Anyway, he went - after he left Alaska
14 initially as a child, from Carlisle, he went to the
15 Banks Business College. Then he was going to go to
16 the Dickenson Law School, but Tillie called him
17 back to Alaska, and he - she needed help. She
18 wasn't well, and so he became a preacher, too. And
19 he preached to the people, and he had a very, very
20 strong sense of what's right and what's wrong.

21 During the legislature of 1931, my father was
22 asked to come to Alaska to consult and assist in
23 writing a Workmen's Compensation Act, which was
24 timely because he had been working on - when he was
25 working in an insurance company in Portland, they

1 had put together a Workmen's Compensation Act for
2 the State of Oregon, so he knew what he was — what
3 was going on.

4 Anyway, he was the only consultant who wasn't
5 paid. That's been our luck all our lives.

6 [Clip]

7 FRANCES PAUL DeGERMAIN: Oh, I should say how
8 he got that hat. One day — Neil Cash was the Chief
9 of the Tee-hit-ton, and he was a drunkard, and he
10 sold the hat to Walter Waters in Wrangell, who had
11 — managed the Bear Curio Shop. And Tillie, my
12 grandmother, Tillie Paul Tamaree, was walking
13 along, and she saw the hat in the window. So she
14 went in, and she had a conversation with Walter
15 about it. The next morning, the hat was in a bag
16 in front of her door.

17 Now, I don't know whether she arranged while
18 she was talking with Walter to give him the "bride"
19 price, canoe — it's here somewhere, one of these
20 pictures — whether he did that then; or whether,
21 because he gave her the hat back, she gave it to
22 him. But anyway, this canoe was a Haida carving.
23 They made the best canoes. Louie Paul Perot's
24 grandfather was so ashamed that Tillie and Louie
25 were married white-man style and didn't do the

1 usual trading which happened in marriages, that he
2 had this canoe built and gave it to Tillie.

3 Well, it was huge. What was she to do with
4 it? So anyway, she gave it to Walter Waters, and
5 that was part of the stuff that was burned when the
6 waterfront in Wrangell was burned later on after it
7 was sold and Walter was dead.

8 [Clip]

9 FRANCES PAUL DeGERMAIN: My mother's memoirs is
10 going to be the basis of a book called "Living with
11 a Native American Activist." And that's my father,
12 and that wasn't easy.

13 [Clip]

14 FRANCES PAUL DeGERMAIN: After my mother died,
15 he spent more time in Alaska. He lived at Sheldon
16 Jackson College, and he taught a class in civil
17 rights.

18 [Clip]

19 [VIDEO PAUSED]

20 NEIL SLOTNICK: How important the Raven hat was
21 to the clan and to the Pauls, Tillie Paul Tamaree
22 actually traded that magnificent racing canoe in
23 order to retrieve the hat and preserve it for the
24 clan, and that was William Paul's mother, Frances's
25 grandmother.

1 Now, one of the questions that I think we must
2 address in this proceeding is: Why did William Paul
3 place the hat in the museum and then later make
4 that placement permanent? And in telling the
5 history of the Teeyhittaan Hat, the subject that
6 comes up over and over again is the subject of fire
7 and the subject of artifacts that are lost forever.
8 You'll recall that the original Teeyhittaan Hat,
9 the original crest hat that had some from the
10 Tsimshians was actually destroyed in a fire, that
11 this hat that we're looking at was a replica carved
12 in the early 1900s, and I'm going to turn again to
13 Frances to have her tell you about the significance
14 of fire because she lived through this, and I think
15 you'll understand when you hear her testimony just
16 how it important it was for William Paul to take
17 the steps necessary to preserve this important,
18 important artifact for the clan.

19 [VIDEO PLAYED]

20 [Clip]

21 FRANCES PAUL DeGERMAIN: — in the Goldstein
22 Building, he had three — three rooms adjoining.
23 One room was his law office in the middle, one was
24 our dining room, and curtained off, my brother's
25 bedroom.

1 And anyway, we lived there until it burned in
2 1939 on February 8th. That was a tremendous shock.
3 We lost everything, all of my father's legal
4 papers, all the lore that Dad had collected, all
5 the records he had kept of all the people,
6 everything. My mother lost all of her white lady's
7 treasures, her porcelain, her silver, her plate
8 service, her cut glass, her gold jewelry.

9 However, when we moved from Ketchikan to
10 Juneau, my grandmother had been in charge of the
11 packing, and she packed the hat, the Tee-hit-ton
12 Hat in a barrel, along with a four-point Hudson's
13 Bay blanket. There were some other things in
14 there, too. And they didn't get burned.

15 So Cash Cole – oh, when we moved from
16 Ketchikan, everything was stored in Cash Cole's
17 barrel. And as we got ourselves together and moved
18 stuff into the Goldstein Building apartment, we
19 didn't take that barrel. It's a good thing, too,
20 because it would have been burned. Incidentally,
21 two Chilkat blankets did get burned.

22 Anyway, that raised Dad's consciousness of
23 fire, plus the fact that that was – that Tee-hit-
24 ton hat was the second hat anyway, even the initial
25 one had been burned.

1 [Clip]

2 FRANCES PAUL DeGERMAIN: Oh, talking at the
3 campfire, yes, houses, big communal houses had
4 platforms that were around, and in the center was
5 where the fire was, and that's where the heat,
6 that's where the cooking was done. But also - oh,
7 it would - the smoke would go up to the ceiling.
8 Also, there would be fire sparks, and there was a
9 group of young men whose job it was to make sure
10 that there would be no fire. Fire was always a
11 danger in the life of the Tlingit people, because
12 it was so devastating. Fighting it was immense.
13 The young men liked to do it because they would get
14 paid. So you know, that's always - you could earn
15 some extra money. So fire was always conscious in
16 my father's mind.

17 NEIL SLOTNICK: Now, I want to turn back to
18 your work on this book, but on the subject of
19 fires, can you mention some of the serious or major
20 fires that your father had been concerned about?

21 FRANCES PAUL DeGERMAIN: Well, of course,
22 there's the Goldstein fire in 1939, which we lost
23 everything. There was - the waterfront in
24 Ketchikan burned. The Hoonah fire - oh, that was a
25 fire. That was during the Second World War.

1 Barrels of oil would float in from the sea and the
2 people would snag them and stick them under the
3 houses.

4 Shortly before the fire, they came – a group
5 of them came and brought regalia that had been in
6 boxes, middle-aged people had never seen the
7 regalia that was in their boxes. They were
8 astounded at what the old people dug out of their
9 boxes, and they came to Juneau.

10 They were really showing off because they –
11 there was a marriage going on in Juneau and one of
12 the – the families felt that the other family was
13 beneath them. So the family that – must have been
14 the one from Hoonah – they went to show them, you
15 know, we are not beneath you. We are high-class
16 people. But they wouldn't allow anybody to take
17 pictures, except they allowed my mother to come
18 after she worked during the day – she was on the
19 Arts Commission that set the – set this exhibit up,
20 too, incidentally. She would come after the show
21 closed at 10 o'clock, and she would sketch hats.
22 She – then after she sketched them and put in the
23 colors and worked with it like that, and then later
24 on she made these wonderful pictures like, for
25 instance – this is the Tee-hit-ton Hat. That did

1 not go. That wasn't part of the exhibit. Anyway,
2 there are other hats, too.

3 There's this hat, for instance. This hat was
4 one of the hats from Hoonah. She did that and
5 others. This is my mother's memoirs, which I also
6 worked on. It's not nearly ready. I'm going to
7 use it as the basis of a book called "Living With a
8 Native American Activist."

9 Anyway, those hats, she drew up bigger and
10 they were turned over to the Juneau — was it
11 territorial, or was it state? — the territorial
12 museum as an exhibit, and they have it — they put
13 them in acid-free frames, etcetera, and I think — I
14 don't know how often they show it, but they put on
15 a big show, and the pictures are available to
16 witness in the basement of the building.

17 Anyway, those — they went — took them back to
18 Hoonah, and they stored them and they had a fire.

19 NEIL SLOTNICK: When you say they took those
20 back, are you talking about the regalia or the
21 pictures?

22 FRANCES PAUL DeGERMAIN: Oh, no, no. No, not
23 the pictures. The took — they took the actual
24 regalia back to Hoonah and put them back in their
25 boxes because they were not to be brought forth

1 until the next big party that they wanted to
2 impress on somebody. And they had a fire, and the
3 whole village burned. That was a real tragedy.

4 Well, some people – they only thing they had
5 was, they came to Mother and asked her to draw a
6 picture for them so that they could have a picture
7 of their hat that had belonged to their tribe.

8 [Clip]

9 FRANCES PAUL DeGERMAIN: Yes, I collected
10 this. I – there are some stories here. There are
11 quotes. There are stories of – well, here's "Totem
12 and Crest Stories, the Keet-kuh-wahl," which is a
13 huge, huge, huge – what do they call that? – fin of
14 a killer whale that has manumitted specs of hair
15 all around. That was a very wonderful thing. It's
16 disappeared. It was in Wrangell. I don't know
17 where it was in Wrangell, whether it was in the ANB
18 Hall or where, but it disappeared.

19 There is a picture of Chief Shakes the Third
20 that was in the ANB Hall. That disappeared. You
21 know, those things should be – should have been in
22 the museum.

23 [VIDEO PAUSED]

24 NEIL SLOTNICK: I want to return for just a
25 second to the Hoonah fire, which occurred in 1944.

1 It was shortly after the Hoonah fire that William
2 Paul made the donation – or excuse me, placed the
3 hat in the museum. This time originally as a loan.
4 This is the aftermath of the fire, and this is a
5 picture of the regalia that had been stored in
6 boxes and was lost in that fire.

7 But fire was not the only way that Tlingit
8 artifacts were lost to clans. This is the
9 Teeyhittaan – a picture of the Teeyhittaan Raven
10 totem pole that was located in Wrangell, and this
11 picture was taken around the early 1900s. That was
12 actually the only Teeyhittaan totem pole, and that
13 was lost through decay.

14 This is a – this is a drawing of Tlingit grave
15 houses near Wrangell, and there were Teeyhittaan
16 grave houses, and if you'll read in the record
17 there is a story of how they were looted and
18 artifacts that had been buried with the – with the
19 Elders were taken from those grave houses, were
20 stolen.

21 This is a picture of Chief Shakes' house in
22 Wrangell, with the totem out front, and the bear
23 screen that you see attached to it. And here is
24 the bear screen today, and it's in the – it's in
25 the Denver Art Museum. It's no longer in the state

1 of Alaska. It's no longer in Wrangell for its
2 clan.

3 So of course, yes, fire was very important in
4 the history of the Teeyhittaan hat, and by making
5 the donation to the museum, William Paul has
6 ensured that that hat is protected for future
7 generations of the Teeyhittaan, both from fire,
8 from sale or from other reasons that it might leave
9 the state or leave permanently.

10 This is a picture of William Paul probably
11 taken around the time that he first placed the hat
12 - that he first became caretaker of the hat. And
13 this is the - a picture of the territorial museum
14 at the time that he became caretaker, and at that
15 time it was a wooden structure. It was not
16 fireproof. Then in 1931, the museum moved into
17 this building, which is still in Juneau today. If
18 you've ever been there, it's now the capital
19 building. This clearly was a fireproof structure
20 and was probably the most fireproof structure in
21 the entire state.

22 I want to turn now to an issue that has been
23 raised by Mr. Echo-Hawk, and that was his argument
24 that he explained to you this morning that we must
25 determine this case, determine the validity of

1 William Paul's authority under what he calls
2 traditional law, and he referred to traditional
3 Tlingit law. But the term Tlingit does not
4 designate a tribe or a government or a law-making
5 body. And Sealaska would agree that the primary
6 governmental unit of the Tlingit Indians is what we
7 call today the clan, and William Paul actually
8 referred to them as tribes, because a tribe to him
9 connoted more of a governmental unit. But we call
10 it today the clan, and we speak of the Teeyhittaan
11 Clan.

12 And so the question here under NAGPRA is this:
13 Did the Teeyhittaan Clan under its law authorize
14 its chief to make the donation of the clan hat to
15 the museum? And so I'm going to make two points to
16 you about this. The first is geographical. We
17 must look at what is the law of the Teeyhittaan
18 Clan, and we showed you the Wrangell area where
19 they are from and there were many different clans
20 there within Wrangell, and the Teeyhittaan Clan is
21 different from the northern ranges of the Tlingit
22 Indians.

23 And the second point that I want to make about
24 this is one that's biographical. If we're going to
25 be applying Teeyhittaan law, we must turn to a

1 person who is an expert in Teeyhittaan law to learn
2 about that. And as you will hear from Frances and
3 as the United States Supreme Court agreed, that
4 expert is William Paul.

5 [VIDEO PLAYED]

6 FRANCES PAUL DeGERMAIN: See, Dad spoke
7 Southern Tlingit, and he wrote this book for the
8 generations of Natives who grew up after the
9 missionaries came and the bureaucrats came and
10 tried to convince the Natives that they were
11 uncivilized and their culture was no good and they
12 had to do it the white way. And he wrote that for
13 them and for white people. So his spelling, for
14 instance – well, Shquindy, S-h-q-u-i-n-d-y, that's
15 simple, Shquindy; Tee-hit-ton, T-e-e-dash-h-i-t-
16 dash-t-o-n. I don't know how the Sitka Tlingit
17 spell it, the Northern Tlingit spell it, but it's
18 got a whole bunch of double A's and double E's and
19 Y's and stuff like, and it's really complicated.
20 But I'm not about to change it in his book because
21 that's the way he wrote it, and I'll be damned if
22 I'm going to let the Northern Tlingits tell my
23 father how to do things. After all, if it weren't
24 for him, I don't know where they'd be.

25 Anyway, so that – this is the book.

1 NEIL SLOTNICK: Tell me what the book is about.

2 FRANCES PAUL DeGERMAIN: The book is – it's
3 called, "The Alaska Tlingit, Where Did We Come
4 From? Our Migrations, Legends, Totems, Customs and
5 Tabus." And here it is.

6 [Clip]

7 NEIL SLOTNICK: So is it fair to say that your
8 father was knowledgeable about Tee-hit-ton laws?

9 FRANCES PAUL DeGERMAIN: Oh, my grandmother had
10 taught him the lore, the protocol, of the Tee-hit-
11 ton family. He knew who the Tee-hit-tons were.

12 [Clip]

13 NEIL SLOTNICK: Do you know of anyone who was
14 as knowledgeable as your father about Tee-hit-ton
15 laws and customs?

16 FRANCES PAUL DeGERMAIN: There is no one, no
17 one. They – the thing is that when he was
18 collecting he wrote it down.

19 [Clip]

20 NEIL SLOTNICK: So I want to ask you a
21 question about your father's knowledge of the Tee-
22 hit-ton.

23 FRANCES PAUL DeGERMAIN: Well, my grandmother
24 Tillie was a Tee-hit-ton. And let's see. Dad
25 became chief of the Tee-hit-ton at one of those

1 interminable hearings the BIA and subcommittees,
2 etcetera, have in Alaska periodically. And he was
3 — Julia Yacook, who was the old lady of the tribe,
4 which was a traditional position of a very powerful
5 woman who controls things behind the scenes, she
6 came down during that hearing, and she announced to
7 everybody there that Nick Cash, the current chief
8 of the Tee-hit-ton, was ill, and therefore, she was
9 appointing that man, and she pointed to my father,
10 as the new Chief of the Tee-hit-ton. So Dad became
11 Chief.

12 And nobody else was consulted. This was a
13 little unusual, but that's the way it was done and
14 everybody accepted it; nobody challenged it. So he
15 became Chief, and as such he theoretically had
16 control of all the regalia that belonged to the
17 tribe. Well, most of the regalia had gone down the
18 whiskey road. There wasn't much left.

19 So when Tillie got back to the hat, she gave
20 it to my father to take care of, and that's — I
21 think I already talked about the Goldstein fire.
22 And the hat was saved, and he decided after that
23 that he had better do something. And so he got to
24 talking with Jane Wallen, who was the curator of
25 the — was she with the Wrangell Museum? I think

1 so. Anyway, he loaned it to her to take care of.
2 And then, somewhere along the line, he thought,
3 this isn't good enough. I think I better make it a
4 gift, and so he made a gift. But he did – he made
5 – he made – what's the word I want? He made some
6 qualifications to the gift. He said they have to
7 have the top knots – these things – the second
8 hatch –

9 NEIL SLOTNICK: And can you describe what
10 you're point to? You're pointing to the picture?

11 FRANCES PAUL DeGERMAIN: Oh, this? There are
12 some straw round things on top.

13 NEIL SLOTNICK: Basketry, is it – rings?

14 FRANCES PAUL DeGERMAIN: I don't remember what
15 they're called. They are – these rings represent a
16 major potlatch, and there were four of them
17 initially. And then these are sprays of ermine
18 tails. And they – anyway, the museum was able to
19 get somebody to build some more, and so they put it
20 together.

21 And he also said it had to be displayed
22 showing that he was the – his name was to be
23 displayed as the custodian of the hat. And then he
24 said the next custodian would be Richard Rinehart,
25 Sr., if he survived Dad. Otherwise, Dad suggested

1 alternative male Tee-hit-ton members. It had to be
2 a male, and it had to be high caste. Well, that
3 was to be a problem faced later.

4 Anyway, they had - he donated it to the
5 museum. He advertised abroad what he was planning
6 to do. He waited. There were no objections. He -
7 who was he to consult? Let's see. Well, I'm sure
8 he consulted my mother. I'm sure he consulted my
9 Uncle Louie. I don't know if he consulted Richard
10 Rinehart. I think Richard was at the time in
11 Portland, but I'm not sure.

12 Anyway, he - oh, the other Tee-hit-tons who
13 were spread abroad, I know there were some in New
14 York, there were some in Florida, there were some
15 in New Orleans, there were some in Portland, and
16 some in San Francisco. No way could he consult
17 those people. Besides, they probably weren't
18 interested. By that time, they were too busy
19 living their daily lives.

20 Gathering tales and protocol and that sort of
21 thing was done during the winter. In the spring,
22 they were - they were fishing. In the summer, they
23 were fishing, too, different kind of fish. In
24 fall, they were hunting. Winter is when they had
25 the potlatches and had all the parties and talked

1 all the — and told all the stories and visited
2 weeks on end.

3 Anyway, after they had the — he changed it
4 into a donation to the museum, they had a big
5 potlatch. They had a party, and they spread the
6 word throughout the land what he had done. He had
7 obeyed Indian law, and he had obeyed white man
8 laws, and then he rested. Oh, that's a joke, son.
9 My father never rested. In fact, he was working
10 for his people the night before he died.

11 [Clip]

12 NEIL SLOTNICK: Do you want to clarify your
13 standing — I mean, you are not Tee-hit-ton?

14 FRANCES PAUL DeGERMAIN: Oh, yes. That's
15 right. Well, I did tell you my name is *Shah-nah-*
16 *Xee Nahn-ya-ahyl*. I am not a Tee-hit-ton. I have
17 no control over that. I've already made it plain
18 what I would do if I did, but I don't. And
19 certainly Sealaska tribal entity is not Sealaska
20 Tee-hit-ton entity. So that takes care of that.
21 And Richard Rinehart, Jr., has retracted his
22 statement that he would gladly accept it from his
23 father, because he is not Tee-hit-ton. He has said
24 in one of his letters that he gladly accepted the
25 responsibility of the hat from his father. That

1 cannot be.

2 [VIDEO PAUSED]

3 NEIL SLOTNICK: So I think we've established
4 one very important point in this case, and that is
5 that William Paul was the foremost expert in
6 Teeyhittaan laws, Teeyhittaan customs, Teeyhittaan
7 usages. He knew this subject better than anyone
8 else. I don't think there's any disagreement about
9 that question.

10 And the next issue that I want to turn to, and
11 this is extremely important in this case, is: What
12 is it that William Paul gave to the museum? We've
13 loosely used the term donation. We've used the
14 term gifted. But what is it, what exactly did he
15 do? And to address this issue, I wanted to address
16 for you - discuss with you a little bit about the
17 subject of crests and how important they are in the
18 Tlingit tradition, but you heard that this morning
19 from George Ramos, from Yakutat, who testified
20 about the crests and how important they are, and I
21 think that his testimony is far better than
22 anything that I can tell you. I'll just put up on
23 the screen here some - some pictures of crests.
24 These are - these are totem poles located in
25 Wrangell, deteriorated - they deteriorated in the

1 late 1800s, and then they were recarved and brought
2 out in the 1900s. They're still here today, if you
3 ever make it to Wrangell.

4 Now the regalia and the crest hats, which is
5 what we're talking about here is a crest hat, they
6 are brought out at potlatches and ceremonies. And
7 this was the 1940 potlatch in Wrangell, and there
8 actually was not another potlatch in Wrangell for
9 many, many years until 2008, actually.

10 But to return to this question, this all
11 important question of, what is it that William Paul
12 did when he filled out this donation form in 1969.
13 This donation agreement clearly gives the museum a
14 right of possession. This form places the
15 Teeyhittaan hat in the permanent collection of the
16 museum, but it puts many, many limits on that
17 donation. This is not an outright donation. It –
18 this form – what William Paul did was he appointed
19 a custodian, and a custodian is a person who has
20 authority. So the museum has a right of
21 possession, but at the same time the Teeyhittaan
22 custodian has authority over the hat. And let me
23 return now to the question that I raised, the crest
24 and the importance. The crests are the intangible
25 aspects of this hat. The image, the stories, the

1 at.óowu, the sacredness of this object that still
2 belongs to the clan. The museum has no ownership
3 of that. That was never given up. And the museum
4 still has rights – I mean, excuse me, the clan has
5 retained its rights to use the hat. This is a
6 picture of Richard Rinehart, Sr., using the hat at
7 a ceremony.

8 In this agreement, William Paul did not
9 alienate the crest, and the crest object is still
10 available to the Teeyhittaan, and that is why the
11 arguments that were made by Sealaska's attorney
12 today are not applicable. They were discussing a
13 body of Tlingit law, some general concept of
14 Tlingit laws that applies to major decisions. One
15 example that they gave was land and how land might
16 be transferred. Or they talked about decisions
17 that – decision-making processes that might be used
18 if a clan were going into battle or making
19 decisions about slaves. That is the type of
20 decision that they were talking about. They were
21 not talking about a decision made in 1969 that
22 would protect an object forever so that it would
23 remain in Alaska where it could be used by the
24 clan, accessed by the clan, and used for
25 educational purposes, both for the benefit of the

1 clan and for the sovereign State of Alaska.

2 Let me turn again now to some testimony from
3 Frances about the issue of authority. And let me
4 remind you that the way this decision was made, it
5 was made for the benefit of the clan because it
6 preserves the hat for future generations. It was
7 made honorably because the custodian of the hat did
8 not personally benefit. And it was made for the
9 future generations of the clan so that they would
10 benefit from it. And for all those reasons,
11 William Paul had the authority to make this limited
12 donation to the museum.

13 [VIDEO PLAYED]

14 NEIL SLOTNICK: So I wanted to move on to a
15 discussion about that Tlingit law and what is -
16 what under Tlingit law and traditions was the
17 process for making major decisions. Does that
18 clarify for you?

19 E. BUDD SIMPSON: Okay. Thanks.

20 FRANCES PAUL DeGERMAIN: Well, okay, each tribe
21 has a council made up of male high-caste members.
22 It depends upon how big the tribe is how many
23 members would be at council.

24 For instance, in Wrangell, which was unique,
25 they had nine tribes that met together, and the

1 chiefs of every one of those tribes would be in the
2 Shgut'quon Federation, and they would make
3 decisions. They were made up of Ravens and Wolfs,
4 and they would discuss things. If somebody
5 disagreed, why that was their privilege. But it
6 was respect, always respect.

7 Let's see. I think I lost track of where I
8 was.

9 They were the — oh, okay, in a matter of
10 battles, for instance, in the Nahn-ya-ahyl Tribe,
11 their chief would be the battle leader. There were
12 the Kiks-uddys and the Koch-uddys and Sitka-uddy,
13 and — well, I don't remember all of them. I've got
14 it written down in the book, all of them, but there
15 were nine separate tribes.

16 But within each tribe there would be the chief
17 and other members of the high caste. Now, that
18 could vary. I have no way of knowing that, and
19 they would make decisions. It could be the chief
20 would make the decision all by himself.

21 Women were important, but behind the scenes.
22 They did not talk in public.

23 [Clip]

24 NEIL SLOTNICK: So you were discussing a
25 decision-making process for all of the tribes that

1 would be in the Sitka area?

2 FRANCES PAUL DeGERMAIN: The nine in the
3 Wrangell area.

4 NEIL SLOTNICK: Excuse me, Wrangell. Right.

5 FRANCES PAUL DeGERMAIN: Wrangell was the only
6 one that had this federation. I don't know what
7 Sitka does, for instance.

8 NEIL SLOTNICK: And were these decisions
9 written down?

10 FRANCES PAUL DeGERMAIN: Oh, no. What would
11 they write them on?

12 NEIL SLOTNICK: So it was oral?

13 FRANCES PAUL DeGERMAIN: My father wrote, but
14 he wasn't alive during that time.

15 NEIL SLOTNICK: We're talking tradition?

16 FRANCES PAUL DeGERMAIN: Nothing was written
17 down. It's all oral history.

18 [Clip]

19 NEIL SLOTNICK: So you were just describing a
20 process for a federation of tribes. What about
21 within one tribe?

22 FRANCES PAUL DeGERMAIN: Well, that would be
23 the - within one tribe would be - well, my father,
24 my Uncle Louie, his - some of his first cousins. I
25 think there was a Nord - I've forgotten. I had

1 been working on the Tee-hit-ton tribal family tree,
2 but I haven't worked on it for several years, and
3 so – but it would be all the senior – well, not
4 senior – all the Tee-hit-ton males who were high
5 caste. I don't know how they got low-caste
6 Indians. I really don't. But I don't have to
7 worry about that because I'm high caste, you know.
8 It doesn't concern me.

9 NEIL SLOTNICK: So would it be all high caste
10 or the Elders who were high caste?

11 FRANCES PAUL DeGERMAIN: High caste. Well, you
12 may only have two Elders. You've got to have high-
13 caste people.

14 NEIL SLOTNICK: Okay.

15 FRANCES PAUL DeGERMAIN: And that could vary on
16 how many people of the tribe there is left. That's
17 sort of falling apart, the tribes that – illness
18 and disinterest and etcetera.

19 NEIL SLOTNICK: And what kind of decisions
20 could the tribal chief make on his own?

21 FRANCES PAUL DeGERMAIN: Oh, I haven't the
22 vaguest idea. I don't live that life. They lived
23 in communal houses. How long has it been since
24 they lived in communal houses?

25 [Clip]

1 NEIL SLOTNICK: And what about the hat itself?

2 Do you think that –

3 FRANCES PAUL DeGERMAIN: It will be saved. It
4 will not burn up.

5 NEIL SLOTNICK: Okay. Now do you have an
6 opinion about why your father made the donation –
7 changed from a loan to a donation?

8 FRANCES PAUL DeGERMAIN: No, I don't have an
9 opinion, just that he for some – maybe it's because
10 he was getting older and what's going to happen
11 after me. I better do something solid about it, so
12 he did.

13 NEIL SLOTNICK: Okay. And do you think – in
14 your opinion, do you think that he had authority to
15 make that – change it from a loan to a donation?

16 FRANCES PAUL DeGERMAIN: He wouldn't have done
17 it if he hadn't.

18 [VIDEO PAUSED]

19 NEIL SLOTNICK: I want to emphasize a couple of
20 the important points made by Frances in this
21 testimony. She told us that under Teeyhittaan law
22 a major decision could be made by one person and
23 accepted by the group. She emphasized respect,
24 always respect, respect for the Elders, respect for
25 the Chief. And then she reminded us too that the

1 tradition was always an oral tradition. It's not a
2 written - it was not a written culture. There was
3 no written record that was produced. And this is -
4 this is a peace treaty from 1876, signed among many
5 different clans, and if you look at this treaty,
6 you're only going to see the signature of the
7 chiefs, just like Mr. Echo-Hawk told you this
8 morning when you look at the donation form, you
9 only see the signature of the Chief of the clan,
10 William Paul.

11 And if you go looking for this record that
12 Mr. Echo-Hawk wants this committee to have before
13 it of the clan decisions, and if you go looking for
14 the record in 1876 with - behind this peace treaty,
15 you're not going to find that record; it doesn't
16 exist. And what Mr. Echo-Hawk is trying to do,
17 really, is to take away some of this committee's
18 authority, some of its ability to make decisions.
19 He wants you to conclude because you don't see that
20 written record of decision making of legislative
21 process that takes place in the clans, that you
22 have to conclude that these clan members who signed
23 this or signed the donation form, William Paul who
24 signed the donation form in 1969, that they were
25 lawbreakers, that they were not people of honor,

1 that they did not obey their own clan internal
2 laws. He says that you have to make that decision
3 because we can't produce here a written record of a
4 clan process. That just is not true.

5 What this committee needs to do is to look at
6 the record in its totality, look at this man
7 William Paul, look at his – at his devotion to
8 following Tlingit law, to understanding Tlingit
9 law, to explaining it, learning about it, teaching
10 others about it. He – that was his life. That was
11 his legacy as a Tlingit leader, as a leader of the
12 Teeyhittaan Nation. He would follow Teeyhittaan
13 law, and that is what he did.

14 Now, Mr. Echo-Hawk refers to our arguments as
15 arguments of fabrication or supposition and
16 conjecture. He says we didn't put any additional
17 evidence into the record. We did. Take a look at
18 our filings. There is evidence in the record. If
19 you look at our Appendix B, it is filled with some
20 of the writings of William Paul, writings about the
21 Teeyhittaan Clan, writing about Tlingit traditions
22 and Tlingit decision making. We've also put in
23 excerpts, other excerpts as well into the record.

24 We certainly have the donation form itself.
25 That's not a supposition. That's a fact, that in

1 1969 William Paul made the donation to the museum
2 of the crest hat while reserving all of the
3 important cultural rights for the Teeyhittaan Clan.
4 We have a letter from the Governor, acknowledging
5 this gift, that it was, in fact, a gift to the
6 sovereign. That's not supposition. That's not
7 conjecture. And we have, and we put this into the
8 record, proof that this was done in public. This
9 was not a middle-of-the-night transaction. This
10 donation was widely publicized throughout Alaska,
11 and it was in fact followed up by Tlingit dancing,
12 and there is even a picture of Dr. Worl, who
13 participated in that dancing.

14 Had the Teeyhittaan considered this donation
15 to be in violation of Teeyhittaan law, they would
16 have found a new leader. Let me read you what
17 William Paul's testimony back in 1952 was about how
18 leadership was controlled within the Teeyhittaan
19 Clan. Sometimes the effective leadership seems to
20 be a sort of referendum all the time. If the
21 people followed him, that man was the chieftain and
22 continued strong. But at any time, the tribe
23 could, if they had cause for so doing, could refuse
24 to obey the man who up to that time had been a
25 hereditary chief, and so his prestige would be

1 lost.

2 William Paul knew that would happen to him if
3 he was to violate Teeyhittaan law, and yet it did
4 not. This was a widely known donation. The
5 Teeyhittaan did not repudiate William Paul, and he
6 knew he was following Teeyhittaan law when he made
7 this donation. That's not conjecture. That's
8 fact.

9 Now, if we – if we have to go to court, if
10 decisions are made here and it ends up becoming
11 litigious and becomes a major battle, judicial
12 battle, and we have to go to court to defend the
13 honor of William Paul, we can do that. We have a
14 very strong case. We have the sworn testimony of
15 Frances Paul DeGermain. We have the extensive
16 writings and testimony of William Paul. We have
17 the donation form. We've got legal arguments.
18 That is not what my clients want.

19 We want to work with you. We want to work
20 with Sealaska. We want to work with the clan. We
21 all have common interests. I think you heard from
22 your counsel this morning that one of the things
23 that this committee can do is it can facilitate the
24 resolution of disputes, and that's what we're going
25 – we are asking this committee to do. Work with

1 us. Let's resolve this. We have common interests
2 with the clan. We have common interests with
3 Sealaska. I think that there's a resolution out
4 there. When we recognize the important fact that
5 you didn't hear at all from Sealaska, which is that
6 the donation made by William Paul is limited, the
7 clan has retained its rights to its *at.óowu*.
8 Undoing William Paul's act to preserve the hat for
9 future generations is not the answer here.

10 [VIDEO PLAYED]

11 [Clip]

12 NEIL SLOTNICK: And so getting back to the
13 terms "honor" and "respect" that you've used, how
14 is — how important is it to honor and respect
15 Elders and ancestors?

16 FRANCES PAUL DeGERMAIN: It is paramount.
17 That's all I can say, it's paramount. It wasn't
18 thought of not being done. That's a white man
19 thing. Indians respected their seniors. They
20 respected the rules. They respected the people.
21 That's a white man thing —

22 NEIL SLOTNICK: So what's a — what's a white
23 man thing.

24 FRANCES PAUL DeGERMAIN: — to disrespect.

25 NEIL SLOTNICK: To undo what the Elders have

1 done, that's a white man thing?

2 FRANCES PAUL DeGERMAIN: They would never undo
3 what the Elders did, their experience and the
4 respect for them. That's a white man thing.
5 They're the ones that disrespect the seniors. It
6 happens all the time. Indians don't do that.

7 [Clip]

8 E. BUDD SIMPSON: So the custodian would have
9 had authority in the future after he was gone to
10 make decisions -

11 FRANCES PAUL DeGERMAIN: Like that, yeah of its
12 use.

13 E. BUDD SIMPSON: - for its display or use?

14 FRANCES PAUL DeGERMAIN: To display, yes. And
15 I do - I think that's written in your agreement,
16 isn't it, that if Richard has a big potlatch or
17 something he can pull the hat out and display it,
18 but it has to stay in something fireproof until it
19 goes back to the - that is a very, very important
20 thing. Fire is - has always been a great thing to
21 worry about.

22 But as far as Richard's having it in his
23 house, the house could burn up. No way. I think
24 my father made it plain that the hat should stay
25 there and when Richard was gone it would go to the

1 next eligible Tee-hit-ton person. And of course,
2 who was that going to be? Well, maybe when I get
3 around to finishing up the family tree we'll come
4 up with somebody. I doubt it.

5 And as far as it being Sealaska, Sealaska is
6 not a tribe, period, end of sentence. Even if
7 Sealaska should name this cultural center Paul
8 Brothers & Sons, I would not be seduced into
9 agreeing to something that was wrong. I hope they
10 name it that.

11 [VIDEO END]

12 NEIL SLOTNICK: I'm not sure that I have done a
13 good job here communicating with you precisely what
14 it is that the museum now has as a result of this
15 donation. So to try to make that a little bit
16 clearer, let me discuss a couple of different
17 incidences. One is an incident that happened in
18 1993, which was long before any NAGPRA proceeding
19 began about this artifact. In 1993, the museum
20 loaned this hat out to Sealaska to be featured in a
21 documentary that Sealaska was making, a video. And
22 after we had done this and the video was aired on
23 TV, it was pointed out to us that we did not have
24 permission from the clan to do this. We stumbled.
25 We made a mistake. We apologized to Richard

1 Rinehart, Sr. Now, if we were claiming ownership,
2 full ownership property rights it's all ours, we
3 would never have to apologize. We would never have
4 to consult with the clan. We could loan it out to
5 whomever we want. We could do with it as we want,
6 and that is not the situation here. It's not just
7 the museum's hat. William Paul gave us the right
8 to house it, to protect it. We have that
9 obligation and we have that right, and it's in our
10 permanent collection. But we can't - we shouldn't
11 go loaning it out to people who want to make
12 movies, videos about it unless Richard Rinehart
13 tells us that that's what he wants. He makes that
14 decision. He controls the image. He controls the
15 use of this object, not us. He does.

16 Here's my second example. This is another hat
17 that's in the permanent collection of the museum.
18 This is the Frog hat of the Kiks.ádi Clan. And
19 this is what we call our ceremonial use agreement
20 that we have with clans, not just around the
21 Kiks.ádi Frog Hat but around other objects as well,
22 that are in our permanent collection. And if
23 you'll look at this agreement here, you'll see that
24 it was signed by David Katzeek, whom you've heard
25 from today, and also Mr. Monroe actually had a

1 great deal of influence in bringing this about.
2 And under this agreement the Kiks.ádi Clan uses its
3 regalia, it takes its Frog house out of the museum
4 when it needs it, and it uses it at the ceremonies,
5 the potlatches. Then it returns it to the museum.
6 This agreement is built on mutual trust, mutual
7 understanding, we have to trust each other or this
8 agreement's not going to work, but we have that
9 trust, and this works very, very well. We don't
10 claim any of the sacred properties of this object,
11 and we don't claim to control this object.

12 This is another ceremony in which the Kiks.ádi
13 were using it. Here they are, important events in
14 a different town taken out of Juneau where it's
15 housed. It goes to Sitka, when Interior – when the
16 Secretary of the Interior visited there. Here is
17 the Kiks.ádi Frog Hat there, in use at the 2008
18 ceremony in Wrangell. And next to the Kiks.ádi
19 Frog Hat is the Leader of All Ravens Hat that
20 Richard Rinehart has.

21 And we've been trying, we've been trying very
22 hard to work out a similar arrangement with the
23 Teeyhittaan Clan, and we haven't been able to
24 succeed in that. This is just a draft agreement.
25 We've been working with the Teeyhittaan so that

1 it's very, very clear to them that Richard
2 Rinehart, Sr., the custodian of the hat for the
3 Teeyhittaan Clan has control over this hat, can
4 take it out to use it at clan events. And yet you
5 heard from Mr. Rinehart today that he still feels
6 that for him to use the hat he has to ask
7 permission from the museum, and I blame myself that
8 I can't - I can't make these two sides mesh. I
9 think we have the same interests. If you talk to
10 Mr. Rinehart, you find that he is very interested
11 in preserving Tlingit culture. He's working very
12 hard on that with the Chief Shakes House down in
13 Wrangell. The museum is a natural place for him to
14 - to help him and what he wants to do.

15 Sealaska Heritage, wonderful organization,
16 dedicated to preserving Tlingit culture. The
17 Museum, Sealaska, we all have common interests.
18 And I look to this committee, and I think you have
19 the - share the same common interests. Help us.
20 Help us communicate with the Teeyhittaan Clan so
21 that we can get to a place where, yes, the Raven
22 Hat is in the permanent collection of the museum
23 and we can honor William Paul and we can honor and
24 respect what he did. We don't need to go undoing
25 what a great Tlingit ancestor did. We can honor

1 and respect that. We can honor and respect Richard
2 Rinehart, Sr. We can honor Sealaska. We can work
3 together. We can honor this committee. We can –
4 we can promote the greatest Tlingit value of all,
5 which is respect for Elders and ancestors.

6 So we ask your help. If you decide to make a
7 legal decision here today, I believe that what
8 you're going to find, what the evidence clearly
9 shows, is that this object is in the permanent
10 collection of the museum. The state of Alaska –
11 the Alaska State Museum has a right of possession
12 to the Teeyhittaan Hat. We know that because of
13 three undeniable facts. First, the donation to the
14 museum did not give up the clan's rights to use the
15 hat for clan purposes. It merely protected the hat
16 for all future generations of the clan. This was
17 consistent with Teeyhittaan law. We know that
18 William Paul had the authority because we know a
19 lot about William Paul. We know that he knew
20 Teeyhittaan law. He knew the limits of his
21 authority. He was very careful and cared deeply
22 about following Teeyhittaan law. He did this act
23 in public, which he knew he had to do in order to
24 be consistent with Teeyhittaan law. And third, the
25 lynchpin of Teeyhittaan law, and we know this from

1 William Paul's writings, the lynchpin was respect.
2 He did not take action against the interests of the
3 Tlingits, against the interests of the Teeyhittaan,
4 and the Teeyhittaan continued to respect him as
5 their leader. These facts prove that he had the
6 authority to make the donation.

7 And I turn to you and I ask you to work with
8 us, help us in working with the Teeyhittaan, so
9 that there is clear understanding that we are not
10 trying to take away their crest object, we are not
11 trying to take away their at.óowu. We must protect
12 it, because we must honor the duty that was given
13 to us by William Paul. Any other result under
14 Tlingit law brings shame. If you undo the action
15 of an ancestor, you are bringing shame. You're
16 bringing shame to the Paul family. We want to
17 honor – we want to honor Tillie Paul Tamaree, who
18 gave up her bridal canoe in order to preserve this
19 hat. We want to honor William Paul who worked so
20 hard to protect Tlingit interests. We do not want
21 to bring shame on the Paul family or upon the clan,
22 and we turn to you and your expertise and ask you
23 to help us reach that result. Thank you.

24 MERVIN WRIGHT, JR.: Thank you.

25 WALTER ECHO-HAWK: I wonder if I might have

1 five minutes of rebuttal on some of the deposition
2 excerpts that we saw, which I think are very
3 misleading?

4 MERVIN WRIGHT, JR.: Okay. I think that for
5 the sake of time five minutes will be strictly
6 enforced.

7 WALTER ECHO-HAWK: Thank you.

8 If I could use the mic here?

9 ROBERT BANGHART: Certainly.

10 **WALTER ECHO-HAWK**

11 WALTER ECHO-HAWK: Mr. Chairman, members of the
12 committee, where's the beef? We have not seen very
13 many facts here concerning the relevant issue. The
14 fact that Mr. Paul was a great man is not disputed,
15 but it's irrelevant because no man, however great,
16 is above the law.

17 Point two, whatever his motive may have been,
18 discussed in the deposition, is also irrelevant.
19 The only question is whether he followed the law.
20 Whether he had good intentions or bad intentions,
21 we simply don't know what his mindset was, but
22 whatever it was it is irrelevant because the only
23 relevant inquiry here is did he have the consent of
24 the clan to give away their property.

25 The fact that Mr. Paul may have been an expert

1 in tribal law or knowledgeable about tribal law is
2 also irrelevant. The only question is did he
3 follow the law, as a matter of fact, more likely
4 than not.

5 As to the excerpts or the selected excerpts of
6 the testimony that he advertised abroad, that he
7 consulted with Mother, he consulted with Uncle
8 Louie, he possibly consulted with Mr. Rinehart,
9 Sr., that is all also shown when you read the
10 transcript at page 55, Uncle Louie was dead by
11 1969, mother was not even a Tlingit, and
12 Mr. Rinehart says that he was not – never
13 consulted. So they've been unable to show anyone
14 that he consulted with.

15 And finally, the convoluted description of
16 counsel as to what this donation document actually
17 gave to the museum: first, in their museum report
18 they said that it conveyed ownership; second, now
19 we hear today that, well, it was just – we gave
20 them – he gave the physical possession of the hat,
21 letting the clan have the nonphysical, intellectual
22 property to it. But that misses the point. He
23 didn't have authority to convey any property
24 interest in that hat under tribal law, however it
25 may be described by legal counsel.

1 As to the draft document that was put up on
2 the screen lastly, we have asked in our reply brief
3 that that be disregarded because it is a draft
4 document, having nothing to do with this dispute
5 over ownership. And I would - we would note here
6 that the museum would not agree that the clan owns
7 the hat in that document so far, which is still
8 under negotiation. So that - the five minutes that
9 I had, and I thank you for hearing me on that.

10 MERVIN WRIGHT, JR.: Thank you.

11 DAVID KATZEEK: Can I have one minute?

12 MERVIN WRIGHT, JR.: One minute.

13 **DAVID KATZEEK**

14 DAVID KATZEEK: Thank you, Mr. Chairman and
15 committee members. I saw my name up there, and it
16 was being used as if I was contradicting what I
17 believe in and what I practice. What you saw up
18 there was an agreement by the clan members
19 regarding the return of a hat that was being
20 auctioned off at Sotheby's of New York. I got the
21 clan members and others and it was brought to my
22 attention by a man that was here, his name was
23 Harold Jacobs, that this object was going to be
24 sold. I got the Central Council, the Sealaska
25 Corporation, as well as the Alaska State Museum, to

1 return these objects basically because I know the
2 law. I am a Tlingit. I speak the language. And
3 not only that, I am a great-great grandchild of the
4 Kiks.ádi Clan, and I have the authority of my
5 people to be able to speak in behalf of and to help
6 my great-great grandfather's clan. So for anybody
7 to say that I went and approved, this was something
8 that the clan people did. I believe even one of
9 your members up there know the history behind this
10 hat and how it was brought back. So you're not
11 hearing the Kiks.ádi people talking about the hat,
12 wanting that hat back, because they made an
13 agreement. This situation is completely different.
14 Thank you.

15 MERVIN WRIGHT, JR.: Thank you.

16 Okay, at this time, we're going to excuse our
17 witnesses, and move forward with the agenda.

18 DAVID TARLER: Mr. Chairman, if I might
19 recommend that we break until 12:30, and then
20 reconvene for the next item on the agenda.

21 MERVIN WRIGHT, JR.: Until 12:30, all right,
22 ten-minute break.

23 **BREAK**

24 MERVIN WRIGHT, JR.: Okay. We would like to
25 ask everyone to find their seat. We are going to

1 reconvene our meeting. I do have an announcement
2 regarding the previous item on the agenda. I know
3 that in recognizing the time constraints and the
4 time frames on the agenda that we are not quite on
5 schedule. But however, due to the important nature
6 of the matters that are brought before the
7 committee, we would like to – you know, for
8 everyone to consider our yielding of the time
9 frames on the agenda.

10 We are going to – in this next half hour or
11 so, we are going to hear the GAO report, the
12 representatives from the GAO, and we will break for
13 a half hour for lunch at the conclusion of this
14 item on the agenda. When we come back after lunch,
15 as I was informed, that we would like to allow the
16 committee some questions to the previous
17 presentation regarding the Sealaska-Wrangell
18 Cooperative Association matter, and then we will
19 get back on schedule with our agenda items. So
20 that was the announcement I wanted to make.

21 So at this time we have Mr. Jeffery Malcolm,
22 Mr. Mark Keenan, Ms. Jeanette Soares, Ms. Hutt, and
23 the Review Committee listed here for the
24 presentation and discussion of the U.S. Government
25 Accountability Office Report to Congressional

1 Requestors on the Native American Graves Protection
2 and Repatriation Act, dated July 2010. So I'll
3 turn it over to GAO representatives.

4 **PRESENTATION AND DISCUSSION: THE U.S. GOVERNMENT**
5 **ACCOUNTABILITY OFFICE REPORT TO CONGRESSIONAL**
6 **REQUESTERS ON THE NATIVE AMERICAN GRAVES PROTECTION**
7 **AND REPATRIATION ACT (JULY 2010)**
8 **COMMENTS BY GAO REPRESENTATIVES**

9 JEFFERY MALCOLM: We're not going to make – in
10 the matter of the consideration of the time, make a
11 presentation going over the report in total. The
12 report has been out there for a number of months
13 now. I understand everyone has copies of it. So
14 I'm just going to cover a few issues that have been
15 raised since the report has come out and then
16 respond to any questions that the Review Committee
17 might have.

18 One of the issues that's come up is, you know,
19 whether – if some things were subjective versus
20 kind of based on facts or criteria, and I guess to
21 comment on that, in the first part of the report in
22 what the law required and in the time frame that it
23 required certain things to be done, clearly that
24 was not a subjective issue; the law requires what
25 it requires. However, you know, there certainly

1 were a couple of issues that were more difficult to
2 evaluate because there's not a lot of specificity.
3 One of those in the inventory process certainly was
4 that, you know, this is not a cookie-cutter
5 process, and what each individual agency, the tasks
6 they needed to perform to have a – what we called a
7 reasonable assurance that they've identified all
8 their items, you know, those activities are not
9 spelled out in the law. It doesn't say that each
10 agency has to do steps one through ten, and then
11 you could go through and see that each agency had
12 done that. So while the end result is specified in
13 the law, the individual steps needed to be taken to
14 reach that, you know, there would be variability
15 from agency to agency depending on their individual
16 circumstances. So that clearly was an issue.

17 One other issue, obviously, was the
18 application of the future applicability rule. Some
19 agencies were saying, well, you know, we have
20 identified new collections and we're in the process
21 of inventorying those collections and publishing
22 notices and getting into compliance with the law.
23 I guess our position on that, again, is that the
24 future applicability rule is not kind of what I
25 would call – and this is a bad term so I even

1 hesitate to use it – kind of a “get out of jail
2 free” card. I mean, that’s – you know, the law
3 required you to take certain steps to identify your
4 collections and so in looking at items that are
5 still being processed today really the question is,
6 you know, is that something you should have already
7 identified. Clearly, we recognize that even doing
8 those actions and having a reasonable assurance is
9 not a hundred percent or a complete assurance, and
10 that there will be items that will continue to be
11 discovered, and I think that’s reasonable, but to
12 the extent there’s major collections, you know,
13 that are still being discovered and inventoried and
14 going through that process, you know, that’s
15 something the law envisioned would have been done
16 sooner.

17 And there’s clearly discussions about, A, the
18 resources that were provided for the activities and
19 whether the five-year time frame was a reasonable
20 time frame, either on the case of agencies which we
21 reviewed or even museums, but we didn’t really
22 focus on that so much. I think we recognized that
23 there were those issues and challenges that the
24 agencies faced. But you know, kind of the question
25 is, well, how long is a reasonable time frame and

1 now we've had four times as long as the initial
2 five years that was allotted, and there's still a
3 lot of activities going on.

4 One of the other comments that was raised as
5 far as the second part of what we covered in that
6 kind of compliance section, the first section of
7 the report dealt with the publication of notices.
8 And again, the law does not specifically have a
9 date of when those notices have to be published.
10 It just says they'll be provided to the Department
11 for publication. So some – you know, we certainly
12 heard that but we're in compliance even though
13 these haven't been published, and we're like, well,
14 it requires that they be published. It just
15 doesn't have a date of when they have to be
16 published by. So then you kind of get, well,
17 they'll be published eventually or later, and
18 therefore we're in compliance. So you know, again,
19 that's an area where I think we would assert some
20 kind of reasonableness standard to say what's a
21 reasonable amount of time? And clearly in National
22 NAGPRA there was a backlog when the huge flood of
23 these notices were coming in originally, there was
24 back and forth. So clearly it's going to take some
25 reasonable amount of time to get all those notices

1 processed and work through that backlog, but I
2 think — I mean, to the extent there's still
3 culturally affiliated items that need to have
4 notices published, and that's what the law
5 requires, so we recommended that those notices be
6 published.

7 Some of the other issues that were raised,
8 certainly one is on how we selected the museums
9 that we selected to speak with and talk to, and
10 then how we used that information in the report.
11 The focus of the report was on Federal agency
12 compliance, so museums, as I'm sure you're all
13 aware, is an incredibly large group of anyone else
14 other than an agency that receives Federal funds,
15 so state and local governments, coroners' offices,
16 law enforcement entities, large museums,
17 universities, etcetera, etcetera. We certainly
18 were within the scope of what we were trying to do
19 to come up with a representative sample of views of
20 all these entities that would be classified as
21 museums. We did talk to a select handful of those,
22 and any other museum, as it's defined in the Act,
23 that wanted to talk to us.

24 We, as we describe in the OS&M, had pretty
25 much an open-door policy, so — and reporting on

1 perceptions is always a touchy subject. I mean,
2 those are peoples' perceptions. And it's really, I
3 think, to look at, you know, how or what we did
4 with that information, and I think for the
5 recommendations that we have are the items that we
6 think are important and those recommendations are
7 based on, you know, strong factual evidence that we
8 have to support those recommendations, not on
9 perceptions.

10 The final issue that I will raise is – and
11 this is something specifically that David Tarler
12 and Sherry have asked us about and I've never
13 really responded to it directly, but on the issue
14 of how the screen – or how the screening of the
15 Review Committee nominations, you know, that should
16 be documented in the letters that go basically from
17 the DFO up through the chain of review and
18 selection up through the Department. And similar
19 to the comments we had about the DFO letters on the
20 disputes and other actions, dispositions of the
21 Review Committee, I mean, really what we look for
22 as auditors is just kind of the fingerprint of the
23 Department's involvement in those activities. So
24 when the Review Committee makes an advisory and
25 provides that input to the Department, the

1 Department then should be, you know, reviewing that
2 and taking that advice into consideration and then
3 reaching a decision which goes out in the DFO
4 letter. So if you look at kind of the evolution of
5 those letters, you really do see today, and which
6 we point out in the report, kind of the footprint
7 or the fingerprint of the Department in saying,
8 okay, this is the issue, this was the advice we got
9 from the Review Committee, and then this is the
10 Department's position on that.

11 I guess it's similar in what we would say with
12 the screening of the Review Committee members that,
13 you know, not to be prescriptive, but again, we're
14 fine that if all the names are forwarded as part of
15 that letter, just being clear kind of the
16 fingerprint of the Department's review of those
17 nominations that they were nominated by, correctly
18 and in accordance with the notice that went out in
19 the Federal Register. So in some of the earlier
20 notices, it was clear, at least they had
21 categorized to say, you know, we got X number of
22 nominations, let's say we got ten nominations for a
23 position, you know, we screened those, X number of
24 those – eight of those people are eligible, they
25 were properly nominated by entities in the Act, two

1 of those individuals were ineligible. One of the
2 questions we had with the recent letter that went
3 forward, though it clearly designated who was
4 nominating specific individuals, in one case an
5 individual nominated by a nonfederally recognized
6 tribe, but it really didn't say anywhere in that
7 letter that that person was ineligible. So I mean,
8 it's just clearly documenting for the record what
9 the review process has been and what the result of
10 that review process was is really what we're
11 looking for there in the screening of those
12 nominations.

13 So again, I think that's most of the issues
14 that I guess I wanted to highlight just briefly
15 here, and we'd be happy to respond to any questions
16 if the Review Committee has any.

17 MERVIN WRIGHT, JR.: Okay, at this time, I'll
18 open it up for the Review Committee if you have any
19 questions for the GAO representatives.

20 ROSITA WORL: Does Sherry have any comments?

21 MERVIN WRIGHT, JR.: Oh, I'm sorry. Sherry.

22 **COMMENTS BY MANAGER, NATIONAL NAGPRA PROGRAM**

23 SHERRY HUTT: I believe in section 8 of your
24 materials, you have the response of the Secretary,
25 and so that would be the Department's response in

1 terms of getting back to the GAO.

2 The way – the way it works when the GAO makes
3 a recommendation is the Secretary responds with a
4 timeline. That's under 8. And then every three
5 months I have the obligation to get back to the
6 Secretary as to the progress we're making to get
7 there and that the agencies are getting there. And
8 it appears that most of these things either were
9 resolved before the GAO finished their report or
10 will be resolved by the end of the calendar year.
11 So there's really not much of an issue there. So
12 that's – but that's how it works once there's a
13 report that's produced.

14 And I think that you will find tomorrow, by
15 the way, I know the original request to the Review
16 Committee that was put to the GAO through the
17 Senate in terms of studying Federal agency
18 compliance, tomorrow when Mariah Soriano of our
19 office puts – gives you the statistics that she's
20 able to now do because we have the database and the
21 physical – the IT capability to do, I think that
22 will illuminate the answers to some of the
23 questions that this Review Committee has had for
24 years in terms of Federal agency compliance. So we
25 can discuss that in the context of a detailed,

1 factual report.

2 **COMMENTS BY GAO REPRESENTATIVES**

3 JEFFERY MALCOLM: Yeah, if I could, just one
4 more brief statement. I mean, I – certainly
5 there's been a lot of renewed vigor and activity in
6 the last five to seven years on this issue, and I
7 think what we saw was, you know, there was a big
8 push when the Act was originally enacted, a rush to
9 get the summaries and inventories and that kind of
10 initial work done, and then after that there was a
11 bit of a lull period, and that's now been picked up
12 again with kind of reinvigorated vigor to get a lot
13 of this done, so certainly there's been an
14 accelerated amount of activity in the last, you
15 know, number of years.

16 But I think that the challenge I've said
17 before, that the current NAGPRA coordinators face
18 in all the Federal agencies is almost somewhat of a
19 double burden because not only are they working on
20 activities now, but trying to recreate activities
21 that happened a long time ago to figure out, okay,
22 where was this left, you know, what work was done
23 on this. They're trying to find out, you know,
24 what all their predecessors had done as well as
25 just kind of an increase in the workload that the

1 current NAGPRA coordinators in the agencies have.
2 And the museums as well, because I talked to
3 museums that were in exactly that same situations
4 specifically, like the Hearst Museum in Phoenix,
5 talking with a new NAGPRA person there at that
6 museum who had only been there recently and going
7 through all the stuff, she's trying to figure out
8 what predecessors had done, you know, 15 years ago
9 on some of this stuff.

10 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

11 MERVIN WRIGHT, JR.: In response to the request
12 from Congress to conduct this report and the study,
13 does the GAO look to follow up on this report at
14 some time in the future to at least reflect on the
15 compliance issues and some of the other issues that
16 are raised?

17 JEFFERY MALCOLM: Right, what our process is –
18 it's a two-part answer, I guess. First of all,
19 part of that original request we got from Congress
20 also included the Smithsonian Institution. Given
21 the time frames that we negotiated with Congress,
22 we weren't able to include the Smithsonian as part
23 of this report, and they're covered by different
24 legislation as well, which would have been very
25 difficult and confusing. So we have ongoing work

1 right now at the Smithsonian Institution on
2 compliance with their repatriation requirements.
3 So we're currently, obviously, still very involved
4 in the issue.

5 Secondly, we do have a process annually for
6 following up in the recommendations that we have in
7 the report, so next summer, after kind of the first
8 year has gone by, we'll follow up with the
9 information provided by the Department and other
10 agencies about what the status is of their
11 implementation of the recommendations. If they've
12 completed those actions, then we'll close them out.
13 If you go on to our website, our public website, at
14 www.gao.gov and enter this report number, there
15 will be a link for recommendation follow up and
16 status. So hopefully by the end of the next fiscal
17 year you can go click on that and for the five
18 recommendations we have – and actually since so
19 many different agencies were involved, each agency
20 is counted as a separate recommendation. So it
21 will be 14 different recommendations, depending on
22 the agency you're interested in, you know. You'll
23 be able to go online and see what the status is.
24 So we – we'll track those on an annual basis,
25 generally, for the next four years or so. And then

1 GAO has a performance goal that we, you know,
2 strive to have our recommendations implemented, and
3 historically after a four-year period we have,
4 generally, an 80 percent implementation rate for
5 our recommendations.

6 MERVIN WRIGHT, JR.: Do you have a question?

7 ROSITA WORL: Thank you, Mr. Chair.

8 First of all, I do want to thank the GAO study
9 for doing at least the Federal compliance. I think
10 the Review Committee had requested that a study be
11 done of Federal compliance, so I do appreciate it.
12 However, I do view it as a preliminary. I think
13 that there's further work that could be done to
14 look at Federal compliance with NAGPRA.

15 Mr. Chair, I don't think that we have the
16 adequate time, you know, to go through all of the
17 issues that are contained in the GAO report. So
18 for now — well, first of all, I'd like to recommend
19 that we will — we should take the time to go over
20 the GAO report ourselves. I think there are some
21 things that we could do as a NAGPRA Committee to
22 improve the work that we do, and to address some of
23 the other issues that are raised by the GAO report.

24 However, Mr. Chair, I do have some concerns
25 and issues with the GAO report that I would just

1 like to note for the record. My first concern is
2 the discussion about the appointment of the Review
3 Committees and then the following discussions about
4 the Review Committee who are sitting on the Review
5 Committee. That's a concern that I have. I feel
6 that the GAO report really worked to undermine the
7 Review Committee, maybe not intentionally, but I
8 think inadvertently the things that they raised,
9 the things that were not addressed, or the
10 questions that were left unanswered raises the
11 issue or suggests that there is a problem with the
12 credibility of the Review Committee in terms of the
13 Review Committee who are sitting on this Review
14 Committee now.

15 And then secondly, the section on page 36
16 where – under the subtitle, "The Review Committee
17 Faces a Number of Challenges in Fulfilling Its
18 Responsibility Under NAGPRA." The – the chapter
19 here talks – says that the perception that the
20 Review Committee favors tribal interests. I take
21 issue with that. In all of the work that we have
22 done, we have said that it is our job as the Review
23 Committee to implement the law, that we are bound
24 by the law. And I have found that as the Chair of
25 the Review Committee, I found that very often we

1 have members who want to go beyond the law, and
2 they would express that frustration about – which I
3 thought went beyond the law. And I think that's
4 indicative – this section is indicative of – by the
5 people that you interviewed. You said, according
6 to the officials of museums and scientific
7 organizations that we have gone – that we favor
8 tribal interests. I think that this committee has
9 been clear in complying with the law. Perhaps
10 there are some areas that I will concede where we
11 took into consideration nonfederally recognized
12 tribes, but I think what we tried to do was to work
13 it through a process where we could respect the
14 wishes of the nonfederally recognized tribes, and I
15 think if we went to the Federal Register when we
16 saw the dispositions we saw that it was actually to
17 a federally recognized tribe. So I think the
18 committee has some work, you know, to do in terms
19 of figuring out how are we going to do this better
20 within, so that there is no question about that.
21 But I do take exception to – that we favor tribal
22 interests. We are merely following the law, and
23 this in my mind, is Indian law, and it is – you
24 know, we are to consider the best interests of the
25 tribes. So I think this is what the committee was

1 attempting to do.

2 The other area of concern that I have is that
3 — is in the discussion of the disputes. It says,
4 Few Review Committee recommendations on disputes
5 were fully implemented. It gets one little half-
6 paragraph. And I'm surprised. You know, if we
7 were going to go into this, then we should have
8 examined that further. If one of the major
9 functions of this Review Committee is to resolve
10 and to make findings on disputes, then there should
11 have been further review and an analysis to find
12 out, you know, why, what was going on there, and
13 then you might have offered recommendations in the
14 way that you have offered recommendations in other
15 areas.

16 There were some other areas that I note that,
17 you know, that weren't even considered and maybe in
18 a future report to Congress we will ask that the
19 GAO look at museums that have not complied with
20 NAGPRA. We have found that there are museums that
21 have not filed summaries or inventories, members of
22 — tribal community members and others have brought
23 this to the attention of National NAGPRA, and have
24 not had satisfactory results or answers there, so I
25 would — I would beg you, you know, to consider

1 that. When we bring this, and I would like to make
2 this as a recommendation in our next report to
3 Congress.

4 The other thing is that – and you did, you did
5 address it to some degree – was that we’ve never
6 had enough adequate funding, and I don’t think
7 we’ve had an increase in our funding since the
8 inception of NAGPRA. But that has had, I think, a
9 tremendous bearing on our ability to implement the
10 law in a timely fashion.

11 My final comment, Mr. Chair, is on your
12 findings on ANCSA Corporations. ANCSA Corporations
13 were created by the United States Congress, and
14 ANCSA was very much like a treaty with Alaska
15 Native people. In there we resolved our aboriginal
16 land claims. And we as Native people chose to go
17 with corporations to implement our land claims.

18 Congress has continued to recognize Alaska
19 Native Corporations as tribes for special statutory
20 purposes. We have over a hundred Federal
21 legislative acts enacted by Congress that
22 specifically recognizes ANCSA Corporations as
23 tribes, and to the benefit of NAGPRA, the NAGPRA
24 Program has recognized tribes and ANCSA
25 Corporations as tribes until this GAO report. At

1 one point in time – I do understand, you know, that
2 the federally recognized tribal list was changed,
3 but we were there on the list when it first began.
4 And if you look at the implementation of NAGPRA in
5 Alaska it has been done by both corporations and by
6 tribes, equally. I actually went in and did an
7 analysis of it and saw that there were an equal
8 number of repatriation grants that went to tribes
9 as went to corporations.

10 Congress further recognized and enacted a law
11 that requires consultation with ANCSA Corporations
12 as tribes. So I just didn't want it to be left and
13 for those who might not have – you know, know all
14 of the laws that I don't want anybody to be
15 thinking that ANCSA Corporations are not tribes for
16 special statutory purposes. We recognize that
17 there are also other federally recognized tribes in
18 Alaska that have governance powers. But this is
19 something that we feel that is also very important
20 to us as Native people who are tribal members of
21 corporations. I just wanted to note that. I do
22 appreciate that the Solicitor will be reviewing
23 that, and I'm hopeful that they will consider, you
24 know, all of these other areas, the 120 laws that
25 recognize ANCSA Corporations as tribes, the special

1 legislation that calls for consultation with ANCSA
2 tribes – with ANCSAs as tribes.

3 So Mr. Chair, I think there's just lots of
4 material in the GAO report. I want to note again
5 that I think that we do need to review it, and I
6 think there are some things, you know, that we can
7 act on in the Review Committee, you know, to make
8 sure that we're doing the best job that we can to
9 implement this law. Thank you, Mr. Chair.

10 MERVIN WRIGHT, JR.: Thank you. Yeah, go
11 ahead.

12 DAN MONROE: Mr. Chair, I just had a couple of
13 questions. Could you clarify what you mean and
14 what you intended in your statement regarding the
15 perception, quote and unquote, that the committee
16 is biased in favor of tribes? What was the value
17 of that? What was the basis of the judgment that
18 you should include a statement like that, given the
19 tremendous diversity that exists in the museum
20 community, the fact that there has long been very
21 divided opinions regarding NAGPRA from the very
22 beginning and continuing today? I'm just not clear
23 given the sort of task that you were set what your
24 intent was and what you think that statement means.

25 JEFFERY MALCOLM: I think in the section where

1 it's mentioned was similar to some of the issues
2 that Rosita mentioned where we're just trying to
3 set up what some of the challenges were. I mean, I
4 think bringing together those diverse opinions and
5 views, like you've said, since the beginning in
6 NAGPRA and trying to balance those out is a
7 continuing challenge. It's been a challenge for 20
8 years. I think it is an ongoing challenge going
9 forward. I mean, there are some people essentially
10 with those perceptions that, you know, are either
11 maybe limiting their involvement or participation
12 in the process and those types of things. I mean,
13 I think we were intending in the section where it's
14 at to highlight a challenge that the body before us
15 faces in implementing the Act, trying to resolve
16 disputes and all those types of functions of the
17 committee. If there are those types of things to
18 come before the committee and, you know, those are
19 parties that are, or are not, going to be involved
20 and engaged in the process, and that is a challenge
21 that you face, to try to deal with all those
22 different points of view.

23 MERVIN WRIGHT, JR.: Okay. Sonya.

24 SONYA ATALAY: Yeah, just to follow up on that,
25 and on what Rosita said as well, I'm wondering if

1 you did speak with any others. I know here you
2 note, officials of museums and scientific
3 organizations, and I'm just wondering if you – if
4 your work did include speaking with tribes at all
5 about this issue to get some follow up or because I
6 know that there have been discussions on the
7 opposite side, saying that the museum – that this
8 committee has been in fact controlled in large part
9 by scientific organizations and museums. So I'm
10 just wondering if you found that in your
11 discussions and if there were discussions with
12 tribes that you –

13 JEFFERY MALCOLM: Yeah, we definitely spoke
14 with tribes and, yeah, I think there – you're
15 correct; there are a diversity of views. I mean,
16 and again, given the limitation and the methodology
17 we had as far as talking to the museums, as well as
18 talking to tribes, we did site visits specifically
19 in the Northwest. We went to ATNI, the Affiliated
20 Tribes of Northwest Indians Conference, and spoke
21 to a number of tribes up in the Northwest area that
22 were attending that conference. We also had site
23 visits in Phoenix, talked to a number of different
24 tribal groups in the Phoenix area, as well as the
25 Intertribal Council of Arizona.

1 So obviously in continuing to do this work, I
2 mean, we've wanted to reach out as much as possible
3 to the extent we can, again managing our funding
4 issues for site visits and whatnot, but in
5 continuing on the Smithsonian engagement we've made
6 site visits to try to cover areas that weren't
7 originally covered, so we were up in Alaska at the
8 AFN Conference just recently, we were in Oklahoma
9 to cover the Oklahoma tribes. So we've been trying
10 to, you know, spread out and get as much of that
11 input. But you're correct, I mean, given the
12 methodology that we had and the selected people
13 that we talked to, you know, those views may or may
14 not be representative. We can't say that they're -
15 that they're widespread or that the majority of the
16 people felt a certain way, but there certainly were
17 significant people that we talked to that had those
18 views.

19 DAN MONROE: And what was your - excuse me,
20 Mr. Chairman.

21 MERVIN WRIGHT, JR.: Dan.

22 DAN MONROE: What was your recommendation to
23 address those issues?

24 JEFFERY MALCOLM: Well, exactly, given that
25 they were those types of perceptions, there was no

1 recommendation specifically to address those
2 issues. So we didn't have the kind of widespread,
3 vigorous methodology to see the extent or how
4 pervasive those were, you know. Were those reviews
5 of the select people we talked to representative
6 of, as you said, the whole community at large? So
7 no, we didn't go any further with that because of
8 the evidence that we had really didn't, you know,
9 lend itself to going further with other types of
10 evidence that we would have needed to do that.

11 So one of the issues that we did move forward
12 with though, that was part of a – seemed to be a
13 factor in some of those perceptions was again just
14 the recruitment issue on the part of the Department
15 of how they handled or their involvement in trying
16 to get certain people on the Review Committee, so
17 we did have a recommendation on that, because we
18 had additional evidence from files from the
19 National Park Service, you know, laying out some of
20 those issues, and so we've – we did have a
21 recommendation to address that.

22 SHERRY HUTT: If I might speak to that, Madam
23 Chair. The GAO report lists specific years, 2005
24 and 2006. The solicitation that Mr. Malcolm is now
25 referring to has nothing to do with '05 and '06,

1 just so you know. It's something historic, back in
2 annals, but when they can to assessing years, they
3 indicated '05 and '06. So if we were going to
4 effectuate behavior modification we would need to
5 know what facts stood behind '05 and '06, and
6 that's not what he's referring to now, just for
7 your clarification.

8 MERVIN WRIGHT, JR.: Okay. Given the time
9 right now - oh, I'm sorry. Alan.

10 ALAN GOODMAN: Thank you. A brief comment.
11 This might be beyond the purview of this report,
12 but in the - it does refer to financial
13 constraints. In fact, that's the last two words of
14 the Executive Summary, yet there don't - do not
15 seem to be any recommendations about funding of the
16 agency. And so I was wondering if in fact that is
17 going to be something in the future or how does the
18 funding issues intersect with this report?

19 JEFFERY MALCOLM: Right, and that's a good
20 question. Thank you, Alan. And it gets to another
21 issue that Rosita touched on somewhat in the
22 disputes, but again, I think there's any number of
23 areas where parties involved in this process would
24 have liked us to have gone farther than what we
25 did, and again, as an audit organization, we kind

1 of have four corners that we kind of operate
2 within, and one of those is really trying to
3 evaluate some criteria, in this case, the law, and
4 measure against what's actually taking place.

5 So for the disputes issue for the Review
6 Committee, the law kind of lays out what that is.
7 I mean, it's really not necessarily in this case
8 our position – our function to kind of take policy
9 discussions about how might this be different. I
10 mean, we have a law. This is what they set out.
11 This is how it's operating. If from a policy
12 standpoint there was – someone thinks there should
13 be a policy change, you know, we have and we can
14 write about, there's a lot of different ways this
15 could be done. It's not GAO's position to either,
16 A, set that policy or make those decisions.

17 And you know, we can provide a lot of
18 different policy options to Congress, but – and
19 funding, I guess, is somewhat of a similar issue.
20 We're kind of operating in the four corners of a
21 box, and it's always kind of two sides of the coin.
22 I mean, one obviously you have the budgets
23 developed by the Executive Branch. So if they're
24 able to put forward a budget request requesting
25 additional funds for these. So typically what

1 we'll hear from Congress is, well, the agency is
2 not asking us for more money; therefore, we're not
3 going to go out on a limb. But at the same time,
4 you know, they make the appropriations and they can
5 frequently provide stuff not in the budget
6 justifications. So it's always kind of a circular
7 argument, and that's essentially where it's at.
8 Congress controls the purse strings. If, in their
9 prioritization, they think this would be an issue
10 that would be a priority from them, that's within
11 their discretion as a policy issue to provide more
12 funding.

13 MERVIN WRIGHT, JR.: Okay. So at this time,
14 you know, I want to just thank the GAO for
15 presenting your report here this afternoon, and you
16 know, coincident or not, having it released during
17 this time of a 20th anniversary, certainly there's
18 areas that are probably reflective as accurate and
19 there's probably some areas that could be tightened
20 up. But regardless of that, you know, I think in
21 looking at where we are today and putting that
22 measurement against the success, the continued
23 challenge or possible failures that may have
24 occurred during this time of implementation,
25 certainly I think this is a time that we need to

1 take advantage of this opportunity to strengthen,
2 to tighten, to enhance, to improve, to increase
3 awareness of some of these areas where the
4 bureaucracy can be overbearing, where the
5 interpretation can be possibly misguided, and so
6 when we look at this opportunity and as Rosita has
7 stated, you know, certainly our obligation and
8 responsibility as a committee will be to take a
9 look at it and to identify those areas where we can
10 respond, you know, to the findings of this report
11 and the recommendations and move it forward.

12 So at this time, we're going to - I guess,
13 Dave, you have some remarks here?

14 DAVID TARLER: First of all, Mr. Chairman, we
15 do intend to complete all of the items that are on
16 the agenda for today, today. And in order to do
17 that, may I suggest that we break for lunch. That
18 we reconvene at 1:45 p.m. here. There is a
19 cafeteria in the building and anyone who has
20 obtained a visitor pass from Sangita Chari or Jaime
21 Lavallee or Katherine Carlton can go downstairs and
22 use the cafeteria, and I would like all of the
23 Review Committee members and NAGPRA Program staff
24 to meet in the room behind the stage. Could we do
25 that please?

1 MERVIN WRIGHT, JR.: Yes, we can. So we will
2 reconvene at 1:45. Thank you.

3 **LUNCH**

4 MERVIN WRIGHT, JR.: It is now 1:46. We would
5 like to reconvene our meeting, and I would like to
6 extend an apology to Mr. Ron Williams. This
7 morning it was stated that he was going to be part
8 of the Sealaska testimony, and it was mistakenly
9 put on the wrong list. So I'd like to just extend
10 that apology to Mr. Williams. He is, however,
11 listed in this afternoon's first item on the
12 agenda. So I just wanted to state that.

13 And as it was stated before we went to lunch,
14 we would like to open this session up for the issue
15 this morning for questions of the Review Committee
16 members to both the Sealaska and Wrangell
17 Cooperative Association and the Alaska State Museum
18 representatives. So I'll open it up at this time
19 for the questions from the Review Committee.

20 **DISPUTE: SEALASKA CORPORATION & WRANGELL**

21 **COOPERATIVE ASSOCIATION — ALASKA STATE MUSEUM**

22 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

23 MERVIN WRIGHT, JR.: I have a question that
24 came up with regard to the issue of the threat of
25 the fire. Has the items in control of the clan

1 ever been lost or damaged due to a fire prior to
2 the showing of the two burnings of those
3 facilities?

4 RICHARD RINEHART, JR.: Mr. Chairman, if I can
5 answer the question, if I understand it properly,
6 you're asking if prior to the fires which were in
7 the mid-1900s, had clan at.óowu been burned in a
8 fire? We know that the original clan crest hat of
9 the Teeyhittaan people was burned in a fire, and
10 then the one that we see today was a replacement
11 carved to replace the one that was burned in the
12 first sometime a hundred years ago. I don't know
13 the exact date when that was, but I had the
14 impression it was in the 1800s. There was a party
15 to bring it back out, to bring out the new hat that
16 was the replacement hat, and there was quite a
17 ceremony that went on to revive the value of the
18 hat.

19 Other than that, I could not say if there were
20 any other fires that consumed any of the clan
21 property.

22 MERVIN WRIGHT, JR.: Do you have a comment
23 also?

24 DAVID KATZEEK: Yes, the answer – the answer to
25 your question I believe Mr. Rinehart has answered.

1 However, I would like to emphasize something.
2 Because an object burned up in a fire, does not
3 give it the right to burn up in a museum, to
4 alienate it from the family because a fire happened
5 before. The same principle is involved if you give
6 it - let it stay where it's at they will have lost
7 it, regardless of whether it's sitting there real
8 safely, because the use of that object is very,
9 very important in our ceremonial, traditional,
10 customary type of activities as a people. And so
11 yes, if this - if this stays where it's at it will
12 be as if it burned up in another fire, but this
13 time it will be a willful decision.

14 ROSITA WORL: Mr. Chair, if I may. We - our
15 objects have spirits, and we know that there have
16 been occasions where our objects have indeed
17 burned. But as you saw in the case of the
18 Teeyhittaan, they made another hat to replace that,
19 so that does happen. That is an occurrence among -
20 within our society. But I wanted to point out one
21 difference is that when an object becomes so old
22 and a reference was made in one of the photographs
23 of a totem pole. When a totem pole gets old and it
24 decays and it will fall, and we will actually let
25 it be because we believe that the totem pole spirit

1 is — they are just dying. The pole is dying. And
2 so it's caused some problems for us in well-meaning
3 people who want to return poles to us because
4 they're already old and decaying. And we've tried
5 to explain to them, well, they're falling and
6 they're dying, and so that's one of the differences
7 in the — in terms of looking at material objects.
8 We see it as a spiritual being, and when they do
9 fall they do die. So those things do happen.

10 MERVIN WRIGHT, JR.: Thank you. Are there any
11 other questions of the committee?

12 DAN MONROE: I have a question to address to
13 both parties, and it pertains to the presentation
14 made by the State Museum suggesting that there may
15 be some mediated approach here, not clarified
16 exactly what that might be, but perhaps something
17 similar to the Kiks.ádi hat. And my question was
18 to first the clan as to your response to that sort
19 of proposal that in effect I guess the State Museum
20 would retain physical ownership and the clan could
21 have access to the hat at any time it wished.
22 Could you — I'm interested in determining whether
23 or not there's any potential role for the committee
24 to be of assistance or whether or not actually
25 that's a dead-end notion. So if I could hear from

1 both parties please.

2 RICHARD RINEHART, JR.: Mr. Chairman and Review
3 Committee, we have been attempting to come to some
4 sort of an agreement for a number of years, first
5 going back into the later 1990s, and then a number
6 of efforts have been made over the last five years
7 to come to agreement. And we have not been able
8 to. It always comes down to a point of the museum,
9 State Museum will not take it out of their
10 permanent collection, which is a term totally
11 contrived by them. I don't think there's anything
12 on the donation document that says we're putting
13 this into the State's permanent collection, but for
14 some reason and maybe museum people know this
15 better than I do, being in a permanent collection
16 means something to the museum. And they are not
17 willing to take it out of there and they're not
18 willing to concede that the clan has ownership of
19 it.

20 And you know, it's — we have this operating
21 agreement and they talk about it, but we get into
22 some of the problems that we are because of like
23 they showed the use of the hat in a video that they
24 didn't have permission, oops, you know, they
25 stubbed their toe. Well, they continued to stub

1 their toe a number of times when my father has
2 tried to attempt to use the hat and when they talk
3 about there wasn't a potlatch in Wrangell from 1940
4 until 2008, there was quite a fiasco trying to
5 obtain the hat and use the hat for their own clan.
6 They would not let my father check it out. They
7 had to send somebody from Juneau down to Wrangell
8 to get it out of the case to hand it to him. They
9 would not let him touch it. They wanted it to sit
10 in a glass case off to the side and nobody touch it
11 during the ceremony, which is not the way these
12 things are used in our ceremonies at all. It would
13 not serve its purpose if that was the case.

14 So they showed you a picture of my father
15 wearing the hat. That was something that was very
16 difficult to do. There was also other times we
17 attempted to obtain use of the hat, and they were
18 denied. So there's all those things. They want to
19 say that it's available for use, but it's only
20 available for use if they say so. It's only
21 available for use if they give their permission.
22 And the clan should not have to ask for permission
23 for use of their own property, and that's where we
24 cannot seem to ever get to agreement on that.

25 DAN MONROE: Thank you.

1 Any comment from the State Museum?

2 NEIL SLOTNICK: The museum will address that
3 because they're the ones that fashioned the
4 ceremonial use agreements.

5 ROBERT BANGHART: The - I respect what
6 Mr. Rinehart was saying there, and I think some of
7 those issues went on prior to my arrival as
8 Director of the museum. But one of the first
9 things that I became involved with when I became
10 Director was to try to find a result for this
11 issue. We met over the summer and taking the
12 concerns that the Rineharts put forward, just as
13 they have now, we authored up an agreement that
14 provided them with a surety of control, one lock,
15 two keys - or two locks, one key - I'm sorry, two
16 locks, two keys. Essentially what it does is it
17 puts control of the hat in the hands of Rineharts
18 in Wrangell. That's where the hat is now and it's
19 been there. If they require using it for whatever
20 purpose, we would, and have in the agreement,
21 authorized the Wrangell Museum, where it currently
22 resides, to at whatever is convenient with the
23 Wrangell Museum gain access to the hat and remove
24 it for use and bring it back.

25 We have not bound the hat in any fashion in

1 terms of controls that have not got equal and
2 balanced issues. The two keys and the right of the
3 two keys, basically prescribes that we are both
4 obligated to work forward with this as a use. We
5 are obligated by the agreement that we – and I say
6 we because I do represent the agency, I wasn't
7 around when it happened but I do represent it now –
8 we obligated ourselves to protect the hat, as we do
9 any of the material in our collection. That's our
10 mission. That's why we're in business. That's why
11 we were founded by the State of Alaska, by the
12 territory, actually, over a hundred years ago. I
13 think it's been shown by counsel that we have a
14 history of mutual agreement and use of materials
15 that have come through the building, that still may
16 be there, that are there, and that our intent is
17 not to stop anyone from realizing the full
18 potential they have in their culture or themselves
19 as human beings.

20 I feel very strongly, I spent 35 years working
21 in the private sector in the State of Alaska
22 developing cultural centers and museums. I
23 couldn't have stayed in that business if I did not
24 understand fully and respectfully the kind of
25 relationships that you have to build on and build

1 with trust and continue to reinforce by testing it,
2 and testing each other, as any good friendship is
3 done, and there is no other way to do that than to
4 walk into it openly and with an understanding that
5 yes, we will make mistakes, both sides will make
6 mistakes. That is human nature. But we will reach
7 any type of agreement we can to resolve those
8 mistakes and not push this to an issue where
9 emotion overtakes something that has traditions
10 that have been here before we, and will continue to
11 be here after us. This is not about us, and I put
12 this into dialogue when we met.

13 To do our jobs effectively at the museum and
14 for the peoples of the Tlingit Nation to do their
15 jobs, we think two and three and four generations
16 out from where we are today. Then we're effective
17 in what we do. We can't think about who we are and
18 what we need as individuals. If we do we lose
19 sight of the real mission here, and that's to cut
20 ground for those that are coming after us. The
21 museum is no different than that.

22 So I would say read that agreement if you - I
23 believe it was submitted in the brief, and look at
24 the differences there. It needs work. It's a
25 draft. But it is a point where I feel we got close

1 and then drifted apart. I would love for us to
2 drift close enough together to join hands and find
3 an agreement in that fashion, and I would look to
4 you guys to guide us there. Oh, this is Bob
5 Banghart, stated for the record, the Director of
6 the State Museum, sorry.

7 RICHARD RINEHART, JR.: Mr. Chairman, as he
8 says there's - we're - there's an agreement in your
9 packet, and if you do read that then I don't know
10 for sure that you have our revised draft, which was
11 substantially different, and I hope that you would
12 read that one as well. It's really quite simple.
13 If the state would just simply concede ownership,
14 we could come to an operating agreement and we
15 could satisfy all of these desires that all the
16 sides are explaining here. They just simply need
17 to concede ownership and then we can work on an
18 agreement. That's all there is to it.

19 WALTER ECHO-HAWK: I'd like to second that
20 thought there. We are talking about a matter of
21 trust here, and if the museum will concede
22 ownership then as a matter - as a matter of trust,
23 then the clan owners of this property would be
24 willing to entertain some sort of an operating
25 agreement, a loan agreement of some kind, but so

1 long as the museum refuses to acknowledge the
2 ownership of this clan property it doesn't put us
3 on the same level field here as far as negotiating
4 an agreement, but I think that if the museum is
5 here to be – as a matter of trust, then they ought
6 to trust the good judgment of the clan owners by
7 acknowledging their ownership interest and their
8 good faith, and then saying we will explore a loan
9 and/or operating agreement with you as the owner.
10 But if they're unwilling to do that then it makes
11 it very difficult to negotiate a settlement of this
12 matter.

13 This is a 10,000-year-old society, and they
14 have maintained their cultural property quite well
15 over that span of time and really don't need a
16 museum to do that for them. But I think in this
17 instance, we do have parties of good will on both
18 sides, you know, but I think that's the key point
19 here.

20 NEIL SLOTNICK: And if I could respond to that
21 for just a second, there's a lot of discussion of
22 this word ownership and property rights, and
23 there's a whole lot of different levels of that as
24 a legal matter. What is – what does property
25 rights consist of? Does it consist of the right to

1 sell the object, to destroy the object, to get rid
2 of the object? We have none of those rights. We
3 don't have those. Those rights – those property
4 rights all belong with the clan. We have no rights
5 to the intellectual property to the image, to the
6 stories, to anything connected with this crest hat,
7 those all belong to the clan. The clan has a right
8 to use it. That's a form of an ownership right.
9 They certainly retain that.

10 We have an obligation, though, that we have to
11 be very careful here that we don't want to shed.
12 We have an obligation to protect. We need to claim
13 enough rights to be able to insure this object, to
14 be able to curate it, and that was what was given
15 to us.

16 And yet I still see a lot of common ground
17 here. I see absolutely total common ground. We
18 should be able to reach agreement. What I hear
19 being the problem is, oh, the hat's only available
20 to us if they say so. Mr. Banghart just described
21 to you how we're trying very hard to communicate.
22 That is not the case. We give the key to the clan.
23 They don't have to ask our permission. The clan
24 has the key to the box in which the hat is located.
25 Yes, we have to have mutual trust and we want to

1 have an agreement where there's notification in
2 advance because that's what people who trust each
3 other do; we talk to each other. That's what we
4 want you to help us work out with the clan, not
5 that they're asking our permission. They have a
6 right to use it. They have that property right.
7 And where this term "ownership" fits in, I don't
8 know the answer. I'm an attorney, but I don't
9 really know what that means when you have this kind
10 of arrangement but I'm willing to go with it. It
11 works and it is respectful to the clan.

12 MERVIN WRIGHT, JR.: Let me just – before you
13 guys respond on this side, you know, ownership, the
14 response that was given, the term "ownership" was
15 introduced. This morning it was "right of
16 possession." That's the terminology that was
17 presented, and I know that this is what we usually
18 need to get right to the bottom line here. Right
19 of possession equals ownership, if I'm mistaken,
20 and these are the terminologies that we tend to get
21 caught up, wrapped up, and tangled in an
22 understanding of what we're trying to accomplish.
23 Now if I'm mistaken – I'm looking over here to our
24 counsel – these are the terminologies, and I
25 appreciate your response in asking the question:

1 What does ownership mean? Certainly the
2 demonstration that a communal property and a
3 responsibility that exists, the museum, you know,
4 states that they have an obligation, that
5 obligation to be responsible. The community is
6 expressing an obligation, an obligation to be
7 responsible. The item itself, you know, has a
8 place where that responsibility has to be
9 determined based on what it is that is being
10 presented here, and I can only say that what we've
11 heard over the last two days in the symposium is
12 dialogue, communication, working together,
13 cooperation. If you're looking to this body here
14 to tell you how to do those things, that in itself
15 is a dilemma. That in itself is, you know, one of
16 those obstacles that we tend to put in front of
17 ourselves if that's how we are going to perceive
18 what our obligation and responsibility is. So I'm
19 going to yield over here to our counsel with regard
20 to right of possession and ownership.

21 STEPHEN SIMPSON: Thank you, Mr. Chairman. The
22 — under the statute and the regulations, what the
23 issue is here is that the tribe has claimed that
24 this is — that this is their object of cultural
25 patrimony, they — and that therefore, under NAGPRA,

1 they have a right to have it returned to them. And
2 the museum can rebut that by a successful claim
3 that they have what is termed in the statute and in
4 the regulations as the right of possession, which
5 basically means that they received it – that it was
6 properly alienated to them under tribal law. The
7 concept of ownership is a slightly different thing.
8 It's similar to a right of possession, but it's
9 probably slightly different.

10 If the – but the committee's – the committee's
11 – as was stated earlier, the committee – in the GAO
12 context, what the committee needs to do is to
13 comply with the law, and in that case you are
14 working on – the question you are to answer is the
15 right of possession under the statute and the
16 regulations. If the parties wish the committee to
17 facilitate the resolution of a dispute by
18 suggesting some concept of ownership that might
19 work for the two parties so that they can resolve
20 their differences, you could certainly do that.
21 But what you are charged with is the right of
22 possession.

23 WALTER ECHO-HAWK: And if I may just add, a
24 ruling in our favor on the evidence that the museum
25 does not have the right of possession, which is

1 tantamount to ownership, we would take that ruling
2 and perhaps that's the best thing that could be
3 done here, and then sit down with the museum at
4 that point as the owners with a right of possession
5 and sit down in good faith, you know, with the
6 museum and see if we can't hammer out a loan
7 agreement. But as long as they are claiming a
8 right of possession or some form of ownership that
9 they say was given to them however described,
10 that's simply not the facts in this case. And we
11 can't operate under that misconception.

12 So I think that the best thing that the Review
13 Committee could do, or one option, is to hand down
14 the ruling based on the evidence in this case, and
15 then the parties could sit down in good faith and
16 mutual trust and see what we couldn't hammer out by
17 way of a loan agreement or some sort of an
18 operating agreement at the discretion of the clan
19 leaders. And I have a gentleman here who very much
20 wants to speak at this point.

21 HAROLD JACOBS: Thank you. My name is Harold
22 Jacobs. I work for the Central Council Tlingit and
23 Haida Indian Tribes. Clan hats are the main symbol
24 of the clan. I would use my hat, but I'm going to
25 use my father's clan hat, which was also

1 repatriated. It was made after the bombardment of
2 Angoon to replace the one that was lost in the
3 bombardment. It went from *Gooshteheen* (phonetic),
4 to his nephew Archie Bell, *Danawoo* (phonetic), to
5 his clan brother *Klauxgeit* (phonetic), Peter
6 *Ganoosh* (phonetic), to my grandmother. My
7 grandmother sold it. She had no right to sell it.
8 She was just taking care of it for the clan. She
9 couldn't put it in a museum. She couldn't sell it.

10 It went from her to the dealer, Michael
11 Johnson, to the collector Mary Crane, to the Denver
12 Museum of Nature and Science. It was repatriated
13 in 1997. My father cried when we picked it up
14 because he had it back. From my father, who died
15 in 2005, it is now in the hands of the next
16 caretaker. In the list of caretakers we have
17 listed, we have the Denver Museum of Nature and
18 Science as one of the caretakers. That's part of
19 the history of the hat. It has a succession of
20 caretakers, and unfortunately the museum was one of
21 the caretakers, but they let it go to the next
22 generation of caretakers, just like we would in our
23 society and they're named in the caretakers.

24 About 30 years ago, the United States
25 Government returned the Crown of Hungary, the Crown

1 of St. Stephen to the people of Hungary. It was
2 kept in the United States for safekeeping. It was
3 kept here to be kept out of harm. It was kept here
4 to be safe, but we always knew it belonged to the
5 people of Hungary. And Jimmy Carter arranged for
6 it to be returned to Hungary, even though it was a
7 Communist regime, because they acknowledged it
8 belonged to the people of Hungary. They didn't
9 dictate how it would be held. They didn't dictate
10 where it would be stored. They knew who it
11 belonged to, and they knew it was the right thing
12 to do. And this is what the State of Alaska needs
13 to do because they know who it belongs to and they
14 need to do the right thing. They know who it
15 belongs to. *Gunalchéesh*. Thank you.

16 NEIL SLOTNICK: You know I'd like to respond to
17 Walter's offer of good faith and his offer to
18 negotiate and say that the museum for its part
19 reciprocates that, that in our view the best thing
20 for this committee to do is just recognize that in
21 the strength of this evidence, yes, William Paul
22 had authority. And if you make the finding that
23 the museum has a right of possession that is not
24 going to close the doors, as far as we are
25 concerned, to any negotiation with the clan or will

1 cause us to assert any more ownership or control
2 over it than what we have under that agreement
3 given to us by William Paul. We are not trying to
4 control your hat. That hat is in the control of
5 the clan, but we have to protect it and we have to
6 curate it. Thank you.

7 DAVID KATZEEK: May I respond to the question
8 as a clan member, not necessarily as in regard to
9 what's there from a clan position? Just briefly –

10 MERVIN WRIGHT, JR.: All right. A brief
11 response.

12 DAVID KATZEEK: (Inaudible.)

13 MERVIN WRIGHT, JR.: Yeah, yes, sir.

14 DAVID KATZEEK: May I?

15 MERVIN WRIGHT, JR.: Yes.

16 DAVID KATZEEK: As a clan member of the
17 Shangukweidí Clan, and one of its tribal leaders, I
18 humbly sit here before you this afternoon, and the
19 point I want to make, I appreciate the efforts to
20 try to come together to resolve differences of
21 opinion. However, as a clan member, I cannot sit
22 here and agree to anything as it relates to that
23 type of thing. What was presented to you after we
24 got done was the effort to bring a picture of a
25 really very well known human being, a Tlingit, and

1 that was good. I don't discredit that. However,
2 the point I want to make to you is this: Our
3 *at.óowu*, that which we have as a people, is no
4 different than the Ark of the Covenant. And just
5 because Moses was the law – brought the law to his
6 people would never in the history of that people
7 give him the authority to turn over the Ark of the
8 Covenant to another institution, so that his people
9 can go and say, okay, could we use it? We have an
10 agreement.

11 For me, as a tribal leader and regarding our
12 *at.óowu*, I can appreciate a desire to work together
13 as a people. And just because I'm disagreeing with
14 the state, I want you to know, does not mean that I
15 don't respect them. I respect them by letting them
16 know my true feelings regarding what I'm talking
17 about. To pervert respect for one's own self
18 interest is really, really compounding the problem
19 even more. To respect someone, to respect another
20 person, another people, is to correct the wrong
21 that was done. That's respect. To be able to
22 continue to enable a disrespectful type of act
23 cannot ever be turned into respect. Respect is
24 being able to just look at what it is and deal with
25 it. We ask for your respect regarding this

1 artifact. Respect the people, respect the
2 children, respect the community, respect the
3 nation, honor them, like we do the same with you.

4 So I use that one particular example to be
5 able to bring home the point, not to do anything
6 disrespectfully toward that group of people but to
7 use that as an example on how spiritual these
8 objects are. It would be like the Presbyterian
9 Church, the Episcopal Church, or the Catholic
10 Church – and I’m not trying to put them down –
11 going to the museum and saying, is it ok if we use
12 this? When will you be available for us to be able
13 to take and use these things?

14 So that’s the heart of the matter. That’s the
15 real heart of the matter, so I’m not speaking – I’m
16 speaking really as a clan member regarding this, so
17 it would be very difficult for us if we had that
18 same kind of situation, that circumstance. Thank
19 you.

20 DAN MONROE: Mr. Chair.

21 MERVIN WRIGHT, JR.: Yes.

22 DAN MONROE: Just to be clear, my questions are
23 based on the fact that the committee may facilitate
24 – if there is a desire on the part of both parties
25 and if asked – an agreement. I’m not suggesting

1 that that is the principle job of the committee. I
2 just wanted to ask the question to determine
3 whether or not that possibility exists and whether
4 or not there was any desire to move that direction.
5 Clearly, in my mind, the answer is no. There's
6 good faith clearly on both sides, but there are
7 fundamental and, as I see it at this point,
8 irreconcilable differences with respect to right of
9 possession. And for my part at least I'm ready to
10 move on and, when the time comes, to discuss how we
11 would, as a Review Committee, find on the issue of
12 right of possession. I appreciate everyone's
13 willingness to step forward and to share your ideas
14 and perceptions, and I want you to understand I'm
15 not and was not suggesting pushing either side into
16 anything but simply trying to fulfill our
17 responsibility.

18 MERVIN WRIGHT, JR.: Thank you, Dan.

19 Yeah, I think at this point, you know, we've –
20 unless any other committee members have a
21 question –

22 SONYA ATALAY: I have some questions.

23 MERVIN WRIGHT, JR.: Okay. Sonya would like to
24 raise some questions.

25 SONYA ATALAY: So I have several questions.

1 The first is related to Tlingit law and traditional
2 cultural practices. There were some – within these
3 documents that we read, and I believe it was raised
4 by the museum, there was a question as to whether
5 Tlingit law had a continuous practice from the past
6 into the present and whether it was practiced in
7 1969. And I would just like to ask anyone who is
8 able to speak to that what the clan's view is and
9 the Tlingit view is on that continuation of Tlingit
10 law and cultural property concepts.

11 WALTER ECHO-HAWK: Thank you for that question,
12 and I may ask some help from some of the Tlingits
13 that are here, but the evidence – the written
14 material that's in the record now contains
15 voluminous evidence that I mentioned earlier on the
16 subject and nature of Tlingit law. And on the
17 subject of communally owned cultural property,
18 *at.óowu* or other communally owned clan property,
19 there is a continuity throughout the 20th century
20 according to this evidence in the record. And this
21 is authoritative sources, Cohen's Federal –
22 Handbook on Federal Indian law has a section on
23 communally owned tribal cultural property and it
24 says you got to look at the tribal law, that you
25 need to look at tribal religious leaders to

1 determine what that law is.

2 And we have a lot of evidence in the record on
3 that, both before 1969 and after 1969, in the form
4 of court decisions that have – where the same
5 issues there were found after extensive evidence of
6 traditional people such as this anthropologist and
7 they handed down opinions. They're cited in the
8 materials, and they emerge with these four rules
9 that I've mentioned, you know. We've documented
10 them. It's more likely than not, that's all we
11 have to prove here, that these four rules were in
12 effect at that time.

13 And I know the museum has gone to great
14 lengths to say, well, there's this exception, you
15 know, if you have a real great man he's above the
16 law and he doesn't need to follow these four rules.
17 But that's not the law, according to the evidence
18 in the record. And saying that he didn't need to
19 consult, he didn't need consent, that a small clan
20 doesn't have these kinds of legal protection, all
21 of these things are simply not the evidence in the
22 record as far as the law is concerned. We have
23 knowledgeable people that are with our delegation
24 that can tell you and those four principles are
25 still the law today. And so there is continuity.

1 I think we're made our case by a preponderance of
2 the evidence of tribal law.

3 SONYA ATALAY: Thank you. That was my
4 understanding from reading the documents of both
5 sides, but I just wanted to have that point
6 clarified for the record.

7 My next question relates to that, which is in
8 traditional practice, and this is for Mr. Rinehart,
9 Sr., as the next – as the next clan leader, it
10 seems from what I understood in reading the
11 documents that you would have been the one to ask –
12 even if the entire clan wasn't questioned or asked
13 for permission for this item to be gifted to the
14 museum that if there were going to be one
15 individual who would be asked that that would at
16 least at the minimum would have been the next clan
17 leader. That's my understanding, and I just wonder
18 – I wanted to ask that question if that is the
19 traditional practice that you should have been
20 notified or would there – or asked or consulted
21 with? Or would there have been someone perhaps
22 above you or other people that would have been the
23 more logical choice to be consulted with regarding
24 handing this over to the museum?

25 RICHARD RINEHART, SR.: Mr. Chair, I am the one

1 that they all look to, and there's no argument that
2 I decide a lot of different things for them and
3 they look to me for whatever is concerning the
4 Teeyhittaan Tribe besides the other things in our
5 government that are under that Native way of life.
6 They would come to me, Teeyhittaan people, and ask
7 me, is this right? And I'd think it over and tell
8 them yes or no. But I am the leader of the
9 Teeyhittaan group in Wrangell, spokesman in other
10 words.

11 It's just like we had a burial service over in
12 Coffman Cove on Prince of Wales Island, reburial of
13 some of our own ancestors' bones. And like I said
14 one time in my presentation that Craig Kwak
15 (phonetic) people on the southern end of Prince of
16 Wales Island said, no, that ain't ours but the
17 Forest Service and the (inaudible) because it was
18 on Prince of Wales Island it goes to Craig and Kwak
19 that live there. And I said, no, that's Wrangell
20 Country. You go to Wrangell, and then when they
21 investigated and he looked it over, they said, no,
22 you go to Richard Rinehart. He is in charge of the
23 Teeyhittaan people in Wrangell through the WCA. I
24 belong to the council. I also have to talk to them
25 about it, and we all took care of that part of it.

1 But they did look at me, and I led the party that
2 did take care of it and reburial service under my
3 leadership, and we do go back to wherever it is.

4 As far as myself is concerned, my grandpa, he
5 was the last of the bear killers where the tribes
6 used to use the spear and little dogs, and he used
7 to tell me about, you know, they didn't think that
8 the Canadian line was here. They didn't say that
9 it was theirs, that all that country was theirs.
10 Used to be they'd go up there to get some gold and
11 bring it back. That's where we got our gold for
12 our earrings and everything like that, but he was
13 telling me that this country belonged to us
14 Wrangell people. He was not a Teeyhittaan,
15 naturally. He was on my men side. My mother was a
16 Teeyhittaan. That's where I got my Teeyhittaan
17 name. *Yuh-Koog'* means Raven Box. That is my name.
18 I don't know what else you would want me to say.

19 SONYA ATALAY: Well, thank you for that. I
20 had -

21 WALTER ECHO-HAWK: Could - could I just add
22 that it's - the evidence in this case is that he
23 didn't consult with anyone, and of all of the
24 people that you would think, a reasonable person
25 would think that he would have consulted with was

1 the very successor caretaker that he himself had
2 named, but the evidence is he did not do that. And
3 so —

4 RICHARD RINEHART, SR.: Is that, ma'am, what
5 you wanted to know?

6 SONYA ATALAY: That's exactly what I wanted to
7 know.

8 RICHARD RINEHART, SR.: No, he never did. My
9 uncle, William Paul, Sr., like I said, I treated
10 him with respect because he was a respectful man.
11 He did a lot of good things for us, and he lived
12 with me. And he told me that I was the caretaker,
13 and he never said that he gifted anything. He said
14 we put it on loan to keep it in a safe place until
15 we get a place in Wrangell to bring it back and
16 then we'll have it where it belongs, in Wrangell
17 under the Teeyhittaan ownership.

18 RICHARD RINEHART, JR.: If I may answer your
19 question a little bit further, I know that the
20 State and in through the lady that you heard,
21 William Paul's daughter, speak talks about there
22 weren't a lot of Teeyhittaan alive at the time, and
23 I think that's what you're getting at perhaps, but
24 there were. And Mr. Paul knew that. If you go
25 back through your Appendix H, you'll see letters to

1 my father. You'll see letters to his brother, and
2 you'll see where he acknowledges that you and your
3 sisters and your brothers, so he knew that the
4 Rinehart family were Teeyhittaan.

5 He also knew that Ethel Lund was Teeyhittaan.
6 He knew — he's drawn out family trees and she is
7 identified there as Ethel Comer, which is what she
8 was known as at the time. And you'll see that the
9 O'Garas, which are the Tamaree family, are
10 Teeyhittaan, and he knew they were and they visited
11 him every Christmas at his house. So the only
12 other family that's around today still would be the
13 Carlstrom (phonetic) family, and actually at that
14 time Tillie Carlstrom, not to be confused with
15 Tillie Paul, was alive and she was older than
16 William. He knew these people. He knew all of
17 them. The fact that Frances didn't is simply
18 related to — she never lived in Wrangell. She
19 never knew these families. She never knew these
20 people. So for her to say, well, who was there,
21 it's just because she didn't know who there was and
22 that there were people and her father knew them.

23 SONYA ATALAY: Thank you. My next question
24 relates to the issue that the museum brought up
25 about this celebration. I wonder if there could be

1 some clarity. I know that it was raised this
2 morning that this celebration was several months
3 after the gift. I wonder if there could be an
4 indication of what the time frame of that was, and
5 also if there's evidence that - or I can ask you
6 since you're here, Mr. Rinehart, if you as the next
7 caretaker attended that celebration of if there is
8 evidence that there were large numbers of people
9 from your clan who came to this celebration. I saw
10 that we saw some images of Tlingit people there,
11 but I just wonder if we could speak to that.

12 WALTER ECHO-HAWK: I'd just like to do a quick
13 answer and then turn this over to Mr. Rinehart, but
14 what we're talking about there is a museum function
15 that was held in Juneau, Alaska, which is far to
16 the north of Wrangell. Wrangell is on an island
17 south, way far away from Juneau, and we had a
18 museum function. The press coverage on it was in
19 the local Juneau paper. It had to do with some
20 donated paintings, was the principle subject of
21 that article, and the museum is trying to make that
22 into some sort of a Tlingit ceremony of transfer or
23 tribal rite of transfer of property, which it in
24 fact was not. The fact that Rosita Worl was there
25 is not probative of Teeyhittaan consent. She's not

1 even a member of that clan. And so it was – you
2 could just simply – it stretches the imagination to
3 call a museum function, an opening, if you will, an
4 art show, to be a tribal ceremony of some kind.
5 But I'll turn this over.

6 RICHARD RINEHART, SR.: I was never notified at
7 any time of any functions. Just like he said, like
8 Wrangell is a little island and Ketchikan is
9 another hundred miles or ninety miles away to the
10 south. Juneau is quite a ways to the north, and
11 how do we get to each other? They go – if they
12 wanted to get a hold of me, just like William Paul,
13 my uncle, William Paul, he knew where I was at.
14 They could have got a hold of me. There was no
15 question about that and asking me if I could make
16 it and if it was that important I would have made
17 it. I would never held back and say, no, I don't
18 want to have nothing to do with you. I'd take part
19 of it because it's a part of us. And I never was
20 asked, no. And I was never asked that it was a
21 gift; it was just a loan, and I stand by that word
22 "loan." Until we had a good place for it in
23 Wrangell, which we have today, and it's well taken
24 care of in a good, safe place. Keys are here, keys
25 are there, that ain't nothing to do with what we're

1 talking about.

2 ROSITA WORL: Mr. Chair, if I may, I guess much
3 has been made about I was at that celebration, and
4 actually when I first heard about it I could not
5 remember. I really couldn't remember that I had
6 even been there at that - at the celebration, so I
7 went back and looked at it, and yes, it turned out
8 that I was there. But the story behind that is
9 that up until the time that Jane Wallen had come to
10 the museum, we weren't really - we weren't really
11 invited. And I remember the first time, we
12 actually had to crash a party, crash one of the
13 receptions to go to the State Museum. And it was
14 for - he used to be the - on the Indian Arts and
15 Crafts Board, and I can't remember his name. He
16 was an actor, really tall guy, and we all wanted to
17 meet him. And so we actually crashed the museum so
18 that we could attend a celebration.

19 And so it must have been at this time that
20 Jane Wallen, who was a friend of the Native
21 community, invited a number of us, but I could tell
22 you as a participant, as a dancer there, in no way
23 do I recall that it was a celebration of the museum
24 getting William Paul's or the Teeyhittaan Clan Hat.
25 I do not recall that it was a celebration to that

1 effect.

2 NEIL SLOTNICK: If I could just respond to
3 Mr. Echo-Hawk's testimony and arguments for just a
4 minute, he referred to that function as a museum
5 function. Well, it was sponsored by the museum and
6 co-sponsored by the Alaska Native Brotherhood, so
7 it was not exclusively a museum function. It was
8 an Alaska Native function and it was a museum
9 function.

10 And before that he referred to our argument -
11 he characterized our argument as saying that
12 William Paul was above the law. That is not our
13 argument. We do not think that William Paul was
14 above the law. William Paul was controlled by
15 Teeyhittaan law, but he followed that. He knew
16 what it was and he followed it, and that's our
17 argument. So I just wanted to correct that
18 mischaracterization. Thank you.

19 DAVID TARLER: Mr. Chair, with respect -

20 MERVIN WRIGHT, JR.: Right.

21 DAVID TARLER: - and with some regret, I need
22 to exercise the responsibilities of the DFO.

23 MERVIN WRIGHT, JR.: Right.

24 DAVID TARLER: And among other things I need to
25 inform the audience that as I stated earlier all of

1 the items on the agenda for today will be addressed
2 today by the Review Committee, and therefore I
3 anticipate that this meeting will extend beyond the
4 5 o'clock hour that we had set for adjournment and
5 is on the agenda today. So first of all, I wish to
6 put the Review Committee, as well as the attendees
7 at this meeting, on notice that we will complete
8 the agenda that is scheduled for today.

9 Also at this time, I do respectfully request
10 that we take into consideration that we have
11 another dispute scheduled for this afternoon, and I
12 anticipate that there will be questions from the
13 Review Committee following that dispute as well.

14 MERVIN WRIGHT, JR.: Thank you, Dave.

15 Yes, we do have another dispute scheduled this
16 afternoon. We also have three presentations that
17 are on the agenda. So with respect to the time and
18 the — just as we dealt with this issue here, we
19 have another dispute that may or may not take as
20 much time, so I would like to at this time move to
21 that next item on the agenda. I want to thank the
22 Sealaska and Wrangell Cooperative Association and
23 the Alaska State Museum for your time and your
24 presence today.

25 RICHARD RINEHART, JR.: Thank you,

1 Mr. Chairman. *Gunalchéesh*.

2 MERVIN WRIGHT, JR.: So if the Hoonah Indian
3 Association and Huna Totem Corporation, University
4 of Pennsylvania Museum of Archaeology and
5 Anthropology, make your way to the table in the
6 front. And who we have listed as witnesses are Ken
7 Grant of the Hoonah Indian Association and Huna
8 Totem Corporation; Gordon Greenwald, the Hoonah
9 Indian Association and Huna Totem Corporation;
10 Clarence Jackson, for Hoonah Indian Association and
11 Huna Totem Corporation; David Katzeek, for Hoonah
12 Indian Association and Huna Totem Corporation;
13 Chuck Smythe, for Hoonah Indian Association and
14 Huna Totem Corporation; Ron Williams, Respected
15 Leader of the T'akdeintaan Clan; Walter Echo-Hawk;
16 Wendy White, Senior Vice President and General
17 Counsel, University of Pennsylvania and Penn
18 Medicine, for University of Pennsylvania Museum of
19 Archaeology and Anthropology.

20 So at this time I'll turn it over to the
21 Hoonah Indian Association, Huna Totem Corporation.

22 **DISPUTE: HOONAH INDIAN ASSOCIATION & HUNA TOTEM**
23 **CORPORATION – UNIVERSITY OF PENNSYLVANIA MUSEUM OF**
24 **ARCHAEOLOGY AND ANTHROPOLOGY**
25 **PRESENTATION: HOONAH INDIAN ASSOCIATION & HUNA**

1 **TOTEM CORPORATION**

2 **DAVID KATZEEK**

3 DAVID KATZEEK: Mr. Chairman, since you have
4 already introduced the panel, I will just refrain
5 from doing it again for the interest of time. So
6 I'll turn it over to Mr. Grant – oh, Mr. Echo-Hawk,
7 pardon me.

8 **WALTER ECHO-HAWK**

9 WALTER ECHO-HAWK: Yes, thank you, sir.

10 Mr. Chairman, members of the Review Committee,
11 Good afternoon, once again my name is Walter Echo-
12 Hawk, and I am the attorney for the claimants in
13 this NAGPRA claim in this NAGPRA dispute. This is
14 a NAGPRA claim that was brought by the Hoonah
15 Indian Association, which is a federally recognized
16 Indian tribe, and the Huna Totem Corporation, on
17 behalf of the Tlingit T'akdeintaan Clan of Hoonah,
18 Alaska. And this is a claim that is being brought
19 against the University of Pennsylvania Museum for
20 the repatriation of 50 objects that are – comprise
21 the Mt. Fairweather/Snail House Collection. And
22 this claim was filed 15 years ago, 15 long years
23 ago in 1995. And it involves, as I mentioned
24 earlier, 50 objects that were assigned 39 catalogue
25 items – catalogue numbers. And just for shorthand

1 today, I'm simply going to refer to it as the Snail
2 House Collection.

3 In this particular dispute, there are only two
4 issues that are before the Review Committee for
5 decision. The first issue is: Did the claimants
6 prove by a preponderance of the evidence that these
7 50 objects are sacred objects, within the meaning
8 of the statute, and objects of cultural patrimony,
9 within the meaning of the NAGPRA statute. The
10 second evidence is – second issue here is did the
11 museum prove by a preponderance of the evidence
12 that it has the – a right of possession to the
13 Snail House Collection. There's no dispute that
14 the claimants are culturally affiliated with the
15 Snail House Collection. And so all we're looking
16 at here are these two issues that I've just
17 identified.

18 The position of the museum in their brief that
19 they filed with you is that they did determine that
20 8 of these 39 catalogued numbers do qualify as
21 sacred objects. In fact, they found that 6 of
22 these items – 6 of these 50 items, are in fact
23 sacred objects within the definition of the
24 statute. They found that one object is a sacred
25 object and an object of cultural patrimony and that

1 one object is an object of cultural patrimony. But
2 the museum denies that the remaining 31 catalogued
3 numbers or objects qualify as either sacred objects
4 or objects of cultural patrimony, and the museum
5 claims that it has a right of possession to the
6 entire collection.

7 The claimants disagree with that
8 determination. It's our position that the entire
9 collection is subject to repatriation under the
10 regulations and the statute. This morning, I gave
11 you our reply brief in this case that I
12 distributed, and our reply brief responds to the
13 position and the arguments that were made and the
14 analysis that was made by the museum to come up
15 with its determination.

16 So what I'd like to do now as briefly as I
17 can, I'd like to do two things in my presentation.
18 First, I'd like to summarize the evidence presented
19 in this case on these two issues, and secondly, I'd
20 like to explain why the museum analyses are faulty.

21 So let me proceed to a summary of the
22 evidence, if I may. And in my reply brief, if you
23 have it with you, and I distributed that to
24 supplement my oral remarks today so that you can
25 review this written reply brief at your leisure,

1 hopefully before you come to a decision in this
2 dispute. But on pages 8 through 12, I sort of
3 summarize the dispositive facts in the record, and
4 I want to go through them, step through them
5 briefly with you. But first of all, before we do
6 that, I think we need to remember what the statute
7 says as far as defining sacred objects and objects
8 of cultural patrimony, and a sacred object under
9 the NAGPRA statute is a specific ceremonial object
10 that is needed by traditional religious
11 practitioners for the practice of traditional
12 religion by present-day adherents. And I think
13 that to determine whether they are needed, the
14 ultimate determination of their continuing
15 sacredness must be made by the traditional
16 religious leaders themselves because they are the
17 ones that have to determine current need, and I
18 think the legislative history sort of flushes that
19 out a bit. And so in looking at a sacred object
20 here, I think it's appropriate for the Review
21 Committee to give great weight to the testimony of
22 our religious – traditional religious leaders and
23 clan leaders that are here today, as to what they
24 need for their continuing ceremonies today, among
25 these items.

1 Secondly, the statute defines an object of
2 cultural patrimony as an object having ongoing
3 historical, traditional, or cultural importance
4 that's central to the Native American group or
5 culture, as opposed to purely individual property.
6 And secondly, that this object of cultural
7 patrimony cannot be alienated or conveyed by any
8 individual and was considered inalienable by the
9 group at the time the object left the tribe, so
10 that's the definition.

11 So I'd like to just step through the basic
12 facts that are in the record, and I did summarize
13 them at pages 8 through 12 of my reply brief that
14 was given out this morning. But I'm going to step
15 through them if you want to look with me as we go
16 through them.

17 First, point one, is that the Snail House,
18 which is also known as the Mt. Fairweather House,
19 is the leading house of the T'akdeintaan Clan of
20 Hoonah, Alaska. There's seven or eight houses that
21 comprise this clan, and the Snail House is the
22 leading house that comprises the clan. It's
23 located on Hoonah — Hoonah, Alaska, on Chichagof —

24 UNIDENTIFIED MALE: Chichagof.

25 WALTER ECHO-HAWK: — Island — I probably

1 butchered that –

2 UNIDENTIFIED MALE: Close enough.

3 WALTER ECHO-HAWK: – close enough, I guess –
4 which lies due west of Juneau. You've got to cross
5 the Icy Strait to get there, and it's due south of
6 Glacier Bay.

7 In 1924 – my point 2 here, I describe the
8 collection. But in 1924, when this collection was
9 acquired by the museum, the Snail House Collection
10 consisted of heirlooms or highly valued things that
11 were – had been handed down by the ancestors, clan
12 ancestors, as the accumulated communal property of
13 the Snail House and of the clan. And that these –
14 at that – in 1924, these heirlooms were communally
15 owned clan property that had been in the possession
16 of the Snail House that were inherited from the
17 ancestors. And I think it's evident if you've read
18 – if you've read the materials in your file,
19 there's an item-by-item description that the
20 claimants have provided, if you read those
21 descriptions I think you will see what emerges from
22 there is something of tremendous, ongoing
23 importance to these Tlingit Indians, and members of
24 the Snail House and of this clan, because viewed as
25 a whole, this collection is literally the sum of

1 their cosmology. It's the accumulated material
2 culture of these people that has been handed down
3 to them and to their unborn generations as the
4 material embodiment of their history, their
5 cosmology, their cultural heritage, and their very
6 identity as members of the Snail House and this
7 clan.

8 From a religious perspective, the
9 uncontroverted evidence in this case establishes
10 that each and every one of these items is imbued
11 with ancestral spirits of animals, of places, of
12 shaman, of leaders, caretakers, family ancestors,
13 who in fact can be summoned in the ceremonies
14 evoked to participate and be present at some of
15 their religious ceremonies. And this remarkable
16 spiritual quality of these items endows these
17 heirlooms with an astounding religious significance
18 and gives each of these objects a profound
19 religious function in the ceremonies.

20 The testimony in the material that you have
21 and that you'll hear today by the religious leaders
22 that are here at this table is that these items are
23 needed for display at the ceremonies, to bring
24 balance to the ceremonies, to evoke these spirits
25 that are associated with these objects.

1 Turning to point 3 on page – gosh, I don't
2 know if I'm seeing my page number here – of my
3 brief here, item 3, it talks about the evidence on
4 tribal law. And here we're talking about 1924,
5 when these items were acquired by the Pennsylvania
6 Museum. The same evidence of tribal law that we
7 talked about earlier today in the Teeyhittaan case
8 we put the same evidence in this case. And here we
9 have evidence of what that tribal law looked like
10 before 1924 and after 1924, and it's the same
11 evidence as in the first case.

12 And from that evidence emerges these four
13 rules that these property are clan property, that
14 the caretakers or in this case the housemasters,
15 you know, simply cannot alienate it, they are
16 merely fiduciaries or trustees, they don't have the
17 power to alienate this property, that it is
18 unalienable in the Western kind of a sense, but
19 there's rare circumstances where it could be
20 transferred within the culture but not to leave the
21 culture. But anyway, the same four rules apply
22 here, as it does in the Teeyhittaan case. And we
23 had the same kinds of evidence, and I would submit
24 to you that we have established more likely than
25 not the existence of these four rules of Tlingit

1 tribal law here.

2 Item number 4 here in my brief, in 1924, the
3 Snail House Collection, these 50 objects, were in
4 the possession of the Snail House at the time that
5 this collection was acquired by Louis Shotridge,
6 who was a Tlingit Indian from another clan. He was
7 employed as a museum collector. But these items
8 were clan property at that time, as I mentioned
9 earlier, had been inherited and held as a single
10 collection of clan possessions, and had been
11 preserved as a collection for use in the Tlingit
12 funerals and potlatch, memorial potlatches and
13 other ceremonial use for present and future
14 generations.

15 Item 5, here in my – on page 11 summary, is
16 that this was also *at.óowu*. These items were also
17 *at.óowu*. The evidence is that it's more likely
18 than not that they were *at.óowu* because we have
19 circumstantial evidence here because these are old
20 items. Our oral tradition may not have recorded
21 each and every step to transform these properties
22 into *at.óowu*, but we can safely presume that they
23 were *at.óowu* for five reasons that are
24 circumstantial evidence. Number one, that the
25 collection was in the possession of the Snail House

1 at the time it was acquired. Number two, according
2 to the collector notes, they were highly valued
3 items that were representing the accumulated
4 history of these people, and they had a religious
5 significance and a function. Number three, they
6 were under the care and protection of a clan leader
7 and a – and a housemaster. And so for these
8 reasons we can infer that these items had been
9 preserved as the assembled patrimony of this clan,
10 precisely because they were highly important and
11 valued objects. And number five, through the long
12 use and many clan ceremonies, some items can become
13 prized heirlooms and – that symbolized clan history
14 and identity or *at.óowu*.

15 So I think that these circumstances strongly
16 suggest that these items had been at some point in
17 days past transformed into *at.óowu* by the steps
18 that were prescribed by tribal law. The museum has
19 insisted that we prove each and every item went
20 through each and every step. But that would not
21 have been the kind of procedural details that would
22 necessarily have been preserved in an oral history
23 for these really old items. I think that the
24 circumstantial evidence is enough, that we can
25 infer that these were probably *at.óowu* more likely

1 than not.

2 On page 12, item six pertains to the sale of
3 these items in 1924, and there the evidence is as
4 follows: that Louis Shotridge acquired the
5 collection from an unknown person – from an unknown
6 person. We've examined the bill of sale. We've
7 examined the museum title documents. We've looked
8 at their accession records. We've searched high
9 and low. There's simply no identity of the seller
10 here. We don't know on this record who sold it.
11 The museum has speculated it might have been the
12 housemaster, Mr. Archie White, but it's pure
13 speculation. We've had also our speculation it was
14 perhaps his wife, but it's contradictory
15 speculation and on this record we just simply don't
16 know who the seller was.

17 And on this record there's also no
18 documentation whatsoever that this unknown person
19 had the consent of the clan to sell clan property,
20 not one scintilla of evidence has been provided
21 about clan consent. And I guess I need to make a
22 quick point here is that even though this was –
23 some of these were house objects, they were owned
24 by the clan, even though the house might have
25 shared some possessory rights. At the end of the

1 day this is clan property.

2 So that is the salient facts in the record.
3 If you apply the four rules of Tlingit property law
4 to these facts you would find that there is no –
5 the museum has not proven a right of possession
6 here because there's – we don't even know who the
7 seller was much less the authority of alienation
8 that this unknown person had by way of consent of
9 the clan.

10 Now, I'd like to move here if I could to why
11 the museum analysis is faulty. Basically, they
12 applied the wrong standards, and I'll explain why
13 real quick here. First of all, the museum brief
14 lays out all of the analysis that they performed
15 and the facts that they relied upon here. But
16 their cultural patrimony analysis is seriously
17 flawed for a few – a couple reasons here.

18 First, they failed to consider the collection
19 as a whole. The academics in the museum put on
20 their microscope and they scrutinized each item
21 individually, and in so doing they got lost in the
22 woods. And the overall importance of this
23 collection, the assembled patrimony of this people
24 escaped their attention because they were too
25 focused on the item-by-item detail and didn't

1 consider by their own analysis the importance of
2 the collection as a whole. It's like trying to
3 decide whether one word in a song is more important
4 than another without looking at the song itself.
5 And I think it's appropriate to look at this as a
6 whole in this instance or at least consider it,
7 because it was a collection at the time it was
8 acquired, it was acquired as a collection, and you
9 need to at least consider it as a whole, as a
10 collection. And when we do, we see that it emerges
11 as the sum and totality of the history and identity
12 and cosmology of a people that have lived in an
13 awesome land for a long, long time.

14 Secondly, the analysis is flawed for this
15 reason, and that is that the actual ongoing
16 importance of these objects to the Tlingit people
17 was grossly undervalued by the analysis, and the
18 reason being is that they assume that none of these
19 items are *at.óowu* and, therefore, fail to look at
20 these items in the cultural context of *at.óowu*.
21 Secondly, their analysis failed to consider that
22 each of these items are endowed with a spirit of a
23 place, of an animal, of an ancestor. And that
24 therefore the spiritual side of these physical
25 objects were – eluded the analysis.

1 Thirdly, they employed this centrality ranking
2 system, which is a very wooden, rigid, academic
3 construct that the academics fashioned from
4 snippets from the literature that imposes
5 artificial values on this culture and treats this
6 culture as if it were a dead culture that can only
7 be described by literature. And they fail to
8 listen to the leaders themselves, and I think that
9 we need to give better – more weight to the actual
10 Tlingit people who are in the best position to tell
11 us: What is the actual importance of these objects
12 to them? And we have people today that can do
13 that.

14 Fourthly, the alienability analysis that they
15 used in their – that they lay out in their brief is
16 wrong because – it's flat wrong because by their
17 own admission, they didn't consider tribal law.
18 They said there's no clear standards here and so
19 they didn't look to tribal law. They ignored the
20 voluminous evidence in the record on tribal law and
21 concluded that all items in Tlingit culture are
22 alienable, are for sale. And I think that
23 demonstrates a fundamental misunderstanding of
24 tribal law from what we heard this morning. The
25 evidence is the same in both cases here. But

1 instead they looked at the wrong factors to try to
2 ascertain what tribal law is. The factors that
3 they looked at were the alleged widespread
4 practices of selling objects. Well, you just
5 simply can't determine what law is by looking at
6 the practices of lawbreakers. And as this
7 committee has handed down in the Apache case, all
8 that evidence shows it's not probative on law but
9 it simply shows that all societies have their
10 lawbreakers or people that don't follow the rules.
11 And similarly here, the absurdity of looking to the
12 practices of lawbreakers to define the law would be
13 as if we looked in the United States here or tried
14 to define United States law by only looking at the
15 illegal practices, would lead an outside observer
16 to think we have no law here in our own country
17 because of these widespread violations of law. So
18 that's absurd to look at – to try to define law by
19 looking at widespread practices.

20 The second thing that they looked at here was
21 the practice of the ANB, the Alaska Native
22 Brotherhood. They said, well, they were
23 discouraging ceremonies back in the – at that point
24 in history. But the problem here is that the ANB,
25 Alaska – Alaska Native Brotherhood, is not a

1 lawmaking body for the Tlingit Nation. It was a
2 civil rights organization, and so it's not
3 probative of tribal law to look at what their – if
4 their leaders may have been discouraging tribal
5 ceremonies at that time. But they were not the
6 lawmaking body for the Tlingit people. We – they
7 already had their own laws in place.

8 And the third area they looked at was the
9 church influence, the fact that the missionaries
10 were coming in and maybe discouraging – trying to
11 discourage the Tlingits from practicing their
12 traditions and their ceremonies and their
13 languages. But here again, that's not probative of
14 tribal law. The churches are not the lawmaking
15 body.

16 So basically the Pennsylvania Museum analysis,
17 cultural patrimony analysis looked at the wrong
18 factors here, and it's no wonder that they then
19 only found that two of these items qualified as
20 cultural patrimony.

21 In a similar vein, their analysis of sacred
22 objects was also faulty, and we're not really sure
23 why. Their brief doesn't tell us on an item-by-
24 item basis the reasons they – the findings they've
25 made with each of these objects, so we kind of have

1 to guess at what facts they relied upon, but we do
2 know that they completely disregarded the
3 uncontradicted evidence that Tlingit religion
4 invests each and every one of these objects with a
5 spirit and they – even though it was stressed again
6 and again and again, by these claimants in their
7 materials over this 15-year period, it was
8 completely ignored. And I think that we – we can't
9 ignore that salient fact here. We have to give it
10 weight and we have to listen to the religious
11 leaders when they tell us about the spiritual side
12 of these physical objects containing the spirits
13 that can, in fact, be evoked. I can think of
14 nothing more powerful and profound by way of a
15 religious object that it has these spirits that can
16 be brought into a ceremony. Now, that's a function
17 and an importance.

18 Finally, the right of possession analysis that
19 the museum used is also flawed, you know, they
20 claim that we have a right of possession to the
21 entire collection here. Well, it's flawed for two
22 reasons. First, as I mentioned earlier, they just
23 simply never considered tribal law for the reasons
24 I mentioned earlier and they looked at the wrong
25 factors here. And secondly, they didn't present

1 any evidence to document who the seller was, so
2 therefore we're all stabbing in the dark. How do
3 we know what the right authority of alienation is
4 of the seller when we don't even know who that
5 person was? And secondly, there's no evidence,
6 direct evidence in this record that the clan gave
7 its voluntary consent to the sale of this
8 collection, to its property. They have a DVD
9 testimony that is cited in their brief of a Tlingit
10 woman who says the missionaries were forcing the
11 Indians to sell their items and therefore the clan,
12 you know, sold a bronze hat. Even that – the words
13 up there doesn't prove their case, because under
14 the statute it has to be voluntary consent, and if
15 you have missionaries that are forcing the people
16 to sell their stuff does not equal voluntary
17 consent.

18 So this concludes my overview of the case, but
19 the museum, with all due respect, you know, applied
20 the wrong standards here. They applied the wrong
21 standards, and I think when you apply the right
22 standards to the evidence in the record in a
23 straightforward manner, you're going to see that
24 the claimants proved more likely than not that
25 these are religious objects. They have a religious

1 significance and a religious function that are
2 needed today, that these are the sum – they are
3 cultural patrimony because they are literally the
4 sum and substance of these people, the totality of
5 their material heritage.

6 MERVIN WRIGHT, JR.: Thank you, Mr. Echo Hawk.
7 As we go down the line I would just like to advise
8 that because of the time constraint, try to keep it
9 brief, you know. Certainly the information that
10 you're sharing is important, and we would just like
11 to try to get – keep this moving. Thank you.

12 WALTER ECHO-HAWK: Thank you.

13 DAVID KATZEEK: Mr. Chairman and committee
14 members, at this present time I have the
15 opportunity to present to you Mr. Ken Grant, of the
16 T'akdeintaan Clan – one of the Clan Leaders of the
17 T'akdeintaan Clan. He will be speaking in Tlingit,
18 and I will do the translation to the best of my
19 ability.

20 **KENNETH GRANT**

21 KENNETH GRANT: I do speak English, but I would
22 like to thank the Chairman of the NAGPRA Review
23 Committee and also the Committee members, and would
24 also like to thank our brother from the south for
25 his prayer this morning and would like to recognize

1 all the other tribes down here. We look at you as
2 brothers and sisters, and we thank you for allowing
3 us to set foot on the land here.

4 (Native Alaskan language.)

5 DAVID KATZEEK: The group that came already has
6 already provided you with very good words in a very
7 good way.

8 KENNETH GRANT: (Native Alaskan language.)

9 DAVID KATZEEK: This is what I want you to hear
10 through our language about who we are, about our
11 (Native American language).

12 KENNETH GRANT: (Native Alaskan language.)

13 DAVID KATZEEK: We have come here to speak
14 about our *at.óowu*, and I want to thank those who
15 have come before us and just say thank you to them.

16 KENNETH GRANT: (Native Alaskan language.)

17 DAVID KATZEEK: Those who are of the different
18 clans, as well.

19 KENNETH GRANT: (Native Alaskan language.)

20 DAVID KATZEEK: You have already heard about
21 the *at.óowu* and how not one human being or one
22 person has the right to those, but that it's for
23 all of the whole clan and the clan system within
24 our Tlingit culture. In addition, it's for the
25 primary purpose of having our children to learn

1 about who they are.

2 KENNETH GRANT: (Native Alaskan language.)

3 DAVID KATZEEK: This way of our life, we never
4 heard of the selling of our *at.óowu*. It was never
5 sold.

6 KENNETH GRANT: (Native Alaskan language.)

7 DAVID KATZEEK: We are in very, very much need
8 of our *at.óowu*, and I've heard people speak on the
9 streets that we really, really need to have these
10 back.

11 KENNETH GRANT: (Native Alaskan language.)

12 DAVID KATZEEK: Our nephews as well, so that
13 they could – our very, very close nephews as well
14 in our Tlingit law, tradition and customs. It's
15 important for them to have as well.

16 KENNETH GRANT: (Native Alaskan language.)

17 DAVID KATZEEK: Long ago, when someone passed
18 away, the *at.óowu* that we had would be brought out
19 in their honor.

20 KENNETH GRANT: (Native Alaskan language.)

21 DAVID KATZEEK: In the practice of our
22 traditions, when someone died, we would bring out
23 our *at.óowu* to them and we would say that we don't
24 want any of your tears to hit the floor. Our
25 blankets, our Chilkat blankets and that which we

1 have is here to catch your tears so that they don't
2 hit the floor, giving words of comfort to the
3 mourning family.

4 KENNETH GRANT: (Native Alaskan language.)

5 DAVID KATZEEK: These are heavy words that he
6 speaks. He said, today, when he went to the museum
7 – or when he went to the museum and it was all
8 packed there, he could hear his ancestors, his
9 relatives saying, we want to go back home. We want
10 to go back home.

11 KENNETH GRANT: (Native Alaskan language.)

12 DAVID KATZEEK: It will be good for them to
13 come back home.

14 KENNETH GRANT: (Native Alaskan language.)

15 DAVID KATZEEK: It will be strength for our
16 children.

17 KENNETH GRANT: (Native Alaskan language.)

18 DAVID KATZEEK: As well as the way we live as a
19 people.

20 KENNETH GRANT: (Native Alaskan language.)

21 DAVID KATZEEK: This will end my comments
22 because of the limited time that we have. Thank
23 you.

24 **GORDON GREENWALD**

25 GORDON GREENWALD: I will speak on behalf of my

1 father at this time. I am not T'akdeintaan. I am
2 T'akdeintaan Yádi, the son of a T'akdeintaan. I am
3 Chookaneidí, Kaach Yaas. I am here before you with
4 my ancestors, Jim Young, Johnny Hengeman
5 (phonetic), Andrew Johnny, they're here with us. I
6 will now read my father's affidavit.

7 Adam Koch Woo Teen Greenwald, Statement

8 *SháadéHáni*, Caretaker

9 T'akdeintaan Clan, Hoonah, Alaska

10 Honorable Members of the NAGPRA Review
11 Committee:

12 My name is Adam Greenwald, and I am the
13 *SháadéHáni*, Caretaker of the Mt. Fairweather/Snail
14 House at.óowu. My Tlingit name is *Koch Woo Teen*.
15 I have been the *SháadéHáni*, Caretaker of the
16 Mt. Fairweather House/Snail House since 1991.

17 I deeply regret that I cannot be here in
18 person today. I am 83 years old, and because of
19 personal circumstances I am unable to travel to
20 Washington, DC. However, many of our clan members
21 are there to represent the T'akdeintaan Clan. The
22 T'akdeintaan Clan is also supported today by
23 several distinguished and honorable Eagles, some of
24 whom will speak on our behalf, including my son
25 Gordon Greenwald, Kaach Yaas, who is the *Naa Káani*

1 or clan in-law for the T'akdeintaan. He will
2 provide the ceremonial service of reading my
3 statement into the record.

4 I trust that you have received and read the
5 considerable information that we have provided you
6 to substantiate our claim about the sacredness of
7 our clan *at.óowu* and their ownership, which is
8 governed by our traditional Tlingit law. If I may,
9 I would like to share with you my responsibilities
10 as *SháadéHáni*.

11 No one individual, even the *SháadéHáni*, can
12 alienate, sell or transfer the *at.óowu* without clan
13 consent. The T'akdeintaan Clan, like all Tlingit
14 clans, collectively owns their *at.óowu*. The
15 *at.óowu* is never transferred or alienated unless
16 the entire clan consents. The only time it may be
17 transferred within our society is if a clan has a
18 liability payment due to another clan. Even a
19 child born into the clan has ownership rights. Our
20 *at.óowu*, which includes our regalia, ceremonial
21 objects, songs, stories, crests, names and land,
22 are transferred through the generations. *At.óowu*
23 embodies the spirits of our ancestors. We use our
24 *at.óowu* in our ceremonies to honor and to reunite
25 with our ancestors. Our *at.óowu* is inalienable.

1 The previous *SháadéHáni*, Richard Sheakley,
2 told me on several occasions, "Koch Woo Teen, when
3 I die there are two pieces of regalia of my own
4 that I want added to our clan *at.óowu* trunks."
5 Richard placed the two rattles into the clan
6 trunks, and to this day, they are in one of the
7 trunks and remain clan *at.óowu*. They belong to the
8 clan.

9 Matthew Lawrence donated several items to the
10 clan in the same way. Once they go into the
11 trunks, they become *at.óowu* that belongs to the
12 clan and no longer to an individual.

13 The office of *SháadéHáni* is transferred
14 through generations within the clan according to
15 Tlingit laws. While my office as *SháadéHáni* is
16 respected and bears great responsibility, I cannot
17 make independent decisions regarding the *at.óowu* or
18 dispose of the *at.óowu* without the clan's consent.
19 No one individual had the right to alienate our
20 clan *at.óowu* that is now held by the University of
21 Pennsylvania Museum.

22 I feel it is important to express that my
23 position as *SháadéHáni* cannot be transferred
24 through family lineage. My spouse, sons and
25 daughters cannot inherit or own the *at.óowu* when I

1 die. They also do not become *SháadéHáni* upon my
2 death. *At.óowu* is owned by the clan and can never
3 be viewed as personal property or owned by any one
4 individual.

5 Clan Leaders/*SháadéHáni*, Caretakers, of *Tsal*
6 *Xaan Hit/Taax' Hit*, Mt. Fairweather House/Snail
7 House, since 1920 is listed as follows: Pete
8 Hopkins, Archie White, John Smith, James Grant,
9 David Kadashan, Matthew Lawrence, Richard Sheakley,
10 Adam Greenwald.

11 Currently there are four clan members that
12 comprise a Mt. Fairweather House T'akdeintaan Clan
13 Council which advises on matters of serious
14 decisions concerning the *at.óowu* for the
15 Mt. Fairweather House, T'akdeintaan Clan. These
16 individuals will be in line to be the next
17 *SháadéHáni*, Caretaker. Our clan will make the
18 decision as to when and who the next *SháadéHáni*,
19 Caretaker, will be.

20 To have been chosen as the *SháadéHáni*,
21 Caretaker, to the T'akdeintaan Clan,
22 Mt. Fairweather House, has been a great honor for
23 me – excuse me – and for the last 19 years I have
24 followed Tlingit law in caretaking the T'akdeintaan
25 Clan's *at.óowu* to the best of my abilities.

1 I thank you for allowing the T'akdeintaan Naa
2 *Káani*, *Kaach Yaas* to read this statement into the
3 record. I trust that you will make the right
4 decisions to return our clan's *at.óowu* and to allow
5 the spirits of our ancestors to return to our home.

6 Signed, Adam Greenwald. Sworn in front of
7 Alice Williams on November 4th, 2010.

8 At this time, I'd like to read a second
9 statement. My Tlingit name is *Kaach Yaas*. My
10 English name is Gordon Greenwald, and I am the
11 *Sha'ade Ha'ni*, Caretaker, of the Hoonah Chookaneidí
12 *at.óowu*, which is Eagle Clan. I was appointed the
13 *Sha'ade Ha'ni*, Caretaker, in August 2010.

14 In support of the affidavit that I read from
15 *Koch Woo Teen*, Adam Greenwald, I submit a statement
16 of the protocol given to me, verbally and in
17 written form, by the previous *Sha'ade Ha'ni*,
18 Caretakers, of the Hoonah Chookaneidí.

19 Verbally I was told by George Martin and Ralph
20 Knutson, and in written form as I will read here by
21 a deceased – our deceased previous Andrew Johnny.

22 The text of the protocol in written format
23 dated June 3, 1981, reads as follows, quote, "Use
24 these the right way. Not for any other purpose but
25 to represent the tribe at potlatch parties. Not to

1 be taken out of Hoonah or to be put in Cultural
2 Center. You will maintain the Old Cultural and
3 Custom Law. These are to be kept by an appointed
4 member of the tribe as long as there is one member
5 left alive in the tribe," end quote.

6 I present this statement to substantiate that
7 the protocol submitted in the affidavit by *Koch Woo*
8 *Teen*, Adam Greenwald, is not limited to one clan;
9 it is the law of the Tlingit Nation.

10 Respectfully submitted, Kaach Yaas, Gordon
11 Greenwald, Hoonah Chookaneidí *Sha'ade Ha'ni*.
12 *Gunalchéesh*.

13 **RON WILLIAMS**

14 RON WILLIAMS: Thank you, Mr. Chairman. My
15 name is Ron Williams, and I accept your apology,
16 but I would like to know what part of the agenda I
17 would have been on; it might have been easier than
18 this one.

19 But I do appreciate the opportunity to speak
20 to this esteemed committee. I've been hearing
21 about this committee since the formation of NAGPRA
22 and all the good that it has been doing. So it's
23 wonderful to be here. And we traveled, I think,
24 from 11 o'clock one morning until 9 o'clock the
25 next morning to get here, so we didn't have much

1 sleep or rest, but we kind of felt it was very
2 important to be here.

3 My name is *Nak Lanei* or Ronald Williams. I am
4 a T'akdeintaan from Hoonah, Alaska. I'm a member
5 of the Mt. Fairweather House, or Snail House, which
6 is a nickname of the Mt. Fairweather House. I'm a
7 trustee of the T'akdeintaan Clan. You heard
8 several members say that without the permission of
9 the clan, where the permission comes from in our
10 clan is from the trustees.

11 Now this part kind of hurts me to bring it up,
12 but it has been mentioned several times about the
13 Alaska Native Brotherhood. We have Albert Kookesh
14 sitting in the back. He's a Past Grand President
15 of Alaska Native Brotherhood. He's also a Past
16 Grand Secretary of Alaska Native Brotherhood for 14
17 years, and I'm a Past Grand President for 5 years.
18 But we both sit on the ANB Executive Committee for
19 life, and that's the one, William Paul, they make
20 reference to him belonging to.

21 You'll hear a little bit about Louis Shotridge
22 a little later. He also was a Grand President.
23 Now, we know this about William is that he wasn't
24 always right. In fact, he lost several debates on
25 motions or resolutions brought on floors of the ANB

1 floor, and these losses were to folks who just
2 barely got a high school education. And I don't
3 know why this happened, but the State of Alaska who
4 seemed to revere William disbarred him. They took
5 him off — you know, they took his bars away from
6 him. Only the state can answer that. Louis
7 Shotridge, his reputation wasn't as good as
8 William. The Executive Committee members, when
9 they pass on, they have a great funeral ceremony
10 for them. Louis died mysteriously, and there were
11 very few people at his funeral.

12 You already mentioned my uncle, Richard
13 Sheakley, who was the head of the — or the
14 spokesman for the T'akdeintaan Clan. Now Adam
15 Greenwald is the spokesman for the Mt. Fairweather
16 House, and Ken Grant, who we heard earlier, is a
17 spokesman for the T'akdeintaan Clan. The clan —
18 the clan itself has seven house groups. So there's
19 seven different house groups, and we had to select
20 one and Ken is our spokesman. You heard Gordon
21 mention James Grant, and he's the grandfather of
22 Ken. James is considered one of the best spokesmen
23 the T'akdeintaan people ever had.

24 All of the at.óowu that are being held by Adam
25 at the present time, we hold them as cultural

1 significance. We hold them as sacred items or
2 objects, as our learned in-law told us a while ago.
3 We bring these out – now they only mention bringing
4 these out at funerals and so forth, but you know we
5 bring them out in several different reasons. We
6 bring them out for marking new buildings that
7 belong to any one of our Tlingit organizations, and
8 you find a red dot right – a red dot in the corner
9 of a building and that's – there was a big ceremony
10 held for that, and all the *at.óowu* comes out for
11 that. We bring them out when we're raising totem
12 poles, because we want to make them sacred when we
13 do this. We bring them out to give good luck to
14 our boats, because we live on water, we live out on
15 the ocean, and that life is not very safe. So we
16 bring – we have a ceremony to bring good luck to
17 those boats. And as Ken had mentioned, we also
18 bring them out when we have a death either in our
19 own clan or with our in-laws.

20 Now in the last six weeks, up around Juneau,
21 Hoonah, Angoon and Haines, we've had several
22 ceremonies in paying off in-laws for their help and
23 giving assistance to a clan who lost a loved one.
24 And these ceremonies last – I think the last one I
25 was at was 20 hours. There's lot of Tlingit music.

1 A lot of *at.óowu* come out on that, you know. And
2 some clans – like we wish we had all of ours
3 because the T'akdeintaan have a great history. Now
4 the T'akdeintaan when Hoonah was founded, there
5 were four clans and they founded Hoonah, the
6 Wooshkeetaan, the Chookaneidí, and the
7 Kaagwaantaan, and the only Raven Clan was the
8 T'akdeintaan. Now that gives the T'akdeintaan a
9 lot of responsibility in balancing the blanket, the
10 hats, and so forth with the other clans. And
11 that's significant, and we wish we had more of our
12 *at.óowu*.

13 I mentioned that when they talked about
14 getting clan permission that in our clan it comes
15 from the trustees. Now, only the trustees of the
16 T'akdeintaan Clan can determine what is *at.óowu*.
17 I'll mention that again; only the trustees of the
18 T'akdeintaan Clan can determine what is *at.óowu* to
19 the T'akdeintaan people. Nobody else can do that.
20 For somebody else to say that something is not
21 sacred or culturally significant to the
22 T'akdeintaan, they don't know the Tlingit law. You
23 know, it's folly of them to be thinking like that,
24 because that law is made in the trusteeship of the
25 T'akdeintaan people. I think when the attorneys

1 talk, you hear them talk about the different laws,
2 and that's where the law is coming from, from the
3 trustees, nowhere else.

4 We have several representations here as was
5 pointed out earlier, and each one of these clans
6 will tell you the same thing: no one can use our
7 regalia, the T'akdeintaan regalia, no one. We
8 don't even give permission to anybody to use them.
9 Only the T'akdeintaan people can use their regalia.
10 No one can tell the sacred stories of the
11 T'akdeintaan people. Mt. Fairweather is a sacred
12 mountain of ours. We were originated at Lituya
13 Bay, which was on the ocean side of the
14 Mt. Fairweather range. No one can sing our songs,
15 and we do have a lot of good music. They cannot
16 sing our songs without our permission, without the
17 trustees' permission. Folks, that is Tlingit law.
18 It's something that we revere and we hold closely
19 to our heart very dearly.

20 As I said, for those to say that they're not
21 sacred or culturally significant to the
22 T'akdeintaan, how do they know that? How do they
23 know that? What do they look to get out of that,
24 you know? Only the trustees know, and we try to
25 teach our people what is sacred and cultural to

1 them.

2 Until just a few years ago, the Tlingit
3 language was not a spoken language at all. All of
4 our stories, even our – even our deeds for land
5 ownership were in totemic designs on totem poles,
6 blankets, screens, on house posts and so forth.
7 When – if you grew up with it, you saw a totem
8 pole, you knew exactly what that story is about.
9 Now, some of us are wearing these vests, like I
10 have on here. I'm – on the back of my vest is an
11 Eagle. On the back of my wife is a little bird,
12 that's her crest. And some of them have Eagles.
13 Now, these are the moieties of the Tlingit Nation.
14 They do not have – the moieties do not have any
15 power at all. Where all the power comes from is in
16 the clan. The clan is the one that dictates the
17 power to their membership. However, the clan
18 cannot go over to another clan and tell the other
19 clan what to do, otherwise you would be in great
20 trouble.

21 Because it was not a written language, you
22 know, and the state again, you know, they said
23 today, you know, because I think what happens with
24 the state some of the other museums in other states
25 pick up on it – you know that in Alaska there is no

1 history about the Alaska Native people in Alaska
2 history books? It sounds weird doesn't it, and
3 that's the truth. So a lot of our youngsters then
4 grow up without knowing who they are and where they
5 come from. So it's really up to us then to teach
6 them who they are and where they come from.

7 The Sealaska Heritage Institute sponsors a -
8 what they call celebrations, every other year, and
9 that's where dance crews from all over southeastern
10 Alaska, even Washington state, Anchorage, come to
11 Juneau, and they sing and dance for three days.
12 There's also storytelling during that period of
13 time. When the youngsters begin to learn who they
14 are and where they come from, you can just see the
15 pride building up in them. Now in our schools in
16 Juneau, our kids get pushed around, bullied and so
17 forth, you know, because they're Native. They
18 don't - they don't get that chance to grow any
19 confidence or anything like that, so as a result
20 they drop out. So this kind of program, of
21 teaching the kids who they are and where they come
22 from, is very important to them. We don't - you
23 can imagine what would happen if we got our *at.óowu*
24 back from the University of Pennsylvania? Wow,
25 that would be significant to these youngsters.

1 Do we need these artifacts? Do we need these
2 at.óowu that are being held by UPenn? You bet.
3 Before they were taken away, all of them had
4 cultural significance, every bit had one. They've
5 been gone now for 86 years. Are they really
6 sacred, really sacred items?

7 I have more to say but we really would
8 appreciate this committee deciding in our favor,
9 not just for me, not just for him, not just for his
10 dad, but for our children. They talk about the
11 Alaska Native Brotherhood, in the preamble it says,
12 to preserve the Alaska Native culture forever,
13 that's in the constitution. Even though it's not a
14 tribal government, it still is an effective force
15 and has been an effective force for the Alaska
16 Native people, not just us, all of Alaska. If it
17 were not for the Alaska Native Brotherhood, there
18 would not have been any Alaska Native Claim
19 Settlement Act.

20 I thank you for your time and I appreciate
21 your attention.

22 MERVIN WRIGHT, JR.: Thank you.

23 At this time, we're going to move on – yes,
24 one more.

25 **DAVID KATZEEK**

1 DAVID KATZEEK: Mr. Chairman and committee
2 members, I'd like to take just a brief moment for
3 Julie to come and hold these *at.óowu* objects before
4 you here. And just for a few moments. I'm not
5 going to take a whole lot of time because you've
6 already heard, I think, a lot about the law and so
7 forth that we're brought to your attention here,
8 but I do want to say this one point. There's no
9 one particular clan that has, like in the previous
10 session, that has their own set of laws. They may
11 have their own set of rules and regulations that
12 work within those laws. And another question that
13 came regarding the Tlingit law: Is it still active
14 and alive today? Yes, it's active and alive today.

15 The reason Julie is holding these – she's my
16 sister – is because these are *at.óowu* and
17 regardless of whether it's a big totem pole or
18 whether it's a box drum or whether it's a small
19 little object, the point of it is the whole story
20 it runs all the way through. It's woven all the
21 way through. These are icons for us that bring to
22 our memory. Someone said our law was not written.
23 When you look at this – for a Tlingit to look at
24 this, this is what is written. This is what is
25 written. This particular artifact right here that

1 I'm wearing is my grandfather's artifact. I am
2 (Native Alaskan language), so I know about (Native
3 Alaskan language), I know about (Native Alaskan
4 language), I know about (Native Alaskan language),
5 and I know about those individuals. This is the
6 law; I can wear what my grandfather had but I
7 cannot claim it as my own. I cannot build a tribal
8 house because I'm a grandchild of the Killer Whale
9 House. I can't build the house because I'm a
10 Thunderbird. I'm not a Killer Whale.

11 So our laws are still alive today. We still
12 practice them. What you saw when others were
13 holding the blanket up and holding the hat and the
14 song, those were our laws in action. Those were
15 our laws really being practiced. It's required of
16 us to do that.

17 Regarding the *at.óowu*, I'll just come back and
18 I'll finish by saying this, that these *at.óowu* that
19 she's holding and I have here, although they are
20 small objects do not diminish the history. It does
21 not diminish the history and all the different –
22 the different artifacts or *at.óowu* that people
23 have, the headdresses, and the list can go on.
24 Just because someone says, well, you can't – that's
25 not *at.óowu*, that's – as Ron well stated, nobody

1 can tell you what's not their *at.óowu*. It's their
2 *at.óowu*. It's something that has their history in
3 it.

4 And then one final thing that I was going to
5 answer the thing, why do people come out when we
6 bring this, whether it's the museum or another
7 place, because we are celebrating the object, not
8 the institution. We're celebrating because that
9 which was lost, that which was taken away, we can
10 see it again, and we can feel the spiritual power
11 that it has. It's not like it's – like people want
12 to make spirituality like when it comes to Native
13 American people is like oooohhhh, like that. It's
14 not that. It's a spirit that we have within us,
15 the power that we have within us to have the nerve
16 to come to another place and sit down and ask for
17 help.

18 And that's what we're doing, Tlingit law is
19 like (Native Alaskan language). You're going to
20 ask, and so that's what we're doing here. We're
21 asking for your favorable consideration of the
22 return of these artifacts even as my grandfather
23 said, he could hear his ancestors saying bring me
24 back home. In the Tlingit law, that is a powerful
25 statement. Bring me back home.

1 And so I'll finish by saying all that and let
2 it go to the next person. Thank you for the time
3 that you've given us today. Gunalchéesh, (Native
4 Alaskan language.) Thank you.

5 MERVIN WRIGHT, JR.: One more.

6 **CHUCK SMYTHE**

7 CHUCK SMYTHE: Good afternoon, my name is
8 Chuck Smythe. Some of you may know I'm a cultural
9 anthropologist with the National Park Service, and
10 I just want to say that I have been cleared by our
11 Ethics Office before coming here today to appear
12 before you.

13 I'm going to address a few questions and then
14 turn to a document, which I've asked David to hand
15 out, I've brought today that provides a brief kind
16 of bullet summary of the University of Pennsylvania
17 Museum's topics for the reasons for repatriating or
18 not repatriating items and bullet items of
19 information provided by the clan.

20 One question is: Why was there no tribal
21 protest over the sale? You hear a lot of that from
22 different museums saying that, you know, without
23 any protest it indicates kind of tacit acceptance
24 of what happened. The evidence from the clan
25 indicates that in this case it was covert and

1 carried out in secret. There's no oral tradition
2 or history in the clan about the transfer as would
3 be expected for disposition of so many important
4 items. And on the other hand, talking openly about
5 the sale of clan possessions would be to advertise
6 a shameful act and would be avoided.

7 I think the lack of tribal outcry does not
8 mean there was consent; more likely that they did
9 not know about it until after the fact, and so then
10 they would not talk about it. This is supported by
11 oral history that Joe White, Archie White's son,
12 commissioned a valuable object, a Chilkat blanket,
13 and gave it away years later in response to some
14 event that had happened; mostly likely, people
15 interpret that to be the loss of these items. It
16 might have been brought about through his mother or
17 his father.

18 And it's interesting that recent information
19 provided by the University of Pennsylvania Museum
20 in their latest letter to David Tarler provided
21 some supporting information similar. They reported
22 that Joe White commissioned a replacement for the
23 brass hat, which is one of the items that was
24 removed in 1924, and also presented that to the
25 clan, and that's the replica that they have in

1 their possession now. That was a statement made by
2 one of the Mills.

3 Just very briefly about *at.óowu*, when an
4 object is first brought out at a potlatch and the
5 clan contributes money and food for its
6 presentation and it is witnessed by opposites, the
7 item becomes a clan possession *at.óowu*. But the
8 point I wanted to make here is that the Tlingit did
9 not keep certificates when this happened for each
10 of their items. And it's becoming a standard here,
11 and in other cases that I've read, where museums
12 are asking for evidence that an item was brought
13 out and formally presented and formally dedicated
14 at a potlatch. Well, many of these items like this
15 collection had been inherited over generations, and
16 used over generations and inherited long after the
17 specific first time an item was used and brought
18 out in that way has passed. So I think that's a
19 standard that is kind of being imposed on these
20 people, and I'm not sure that – I don't think it's
21 really following the law in that respect.

22 It's also the case that objects can be
23 considered as *at.óowu* when they are used over and
24 over again and they have come to be regarded as
25 great treasures. In this case these items were

1 maintained – as has been said before, these items
2 were maintained in a collection that was preserved
3 for ceremonial purposes. Some were relatively new.
4 Others had been possessed and used for generations.
5 And they had all been used in ceremonies and were
6 devoted to ceremonial use.

7 The handout which – did that go around? – is a
8 brief, like I was saying, it's a brief outlined
9 presentation of the UPM information for different
10 objects and the information provided by the Hoonah
11 Heritage Foundation and Huna Indian Association for
12 evidence for cultural patrimony and sacred object.
13 I'll just discuss one or two in the interests of
14 time. I was going to talk about more, but I just
15 wanted to go through a couple and – that will be
16 illustrative of the issues.

17 I'll talk about the Ceremonial Blanket, the
18 Diving Whale Blanket, which is number NA6848 on
19 page 9. You can see in the museum's determination,
20 the Whale is not a primary crest. It's classified
21 as a subcrest and that type is a borrowed crest and
22 the object is not a primary type. So those are the
23 kinds of reasons that they do not consider an
24 object like this to be patrimony unless it has
25 additional information with it. We've provided

1 additional information and the collector has
2 provided additional information, but apparently
3 that wasn't sufficient for the museum. I'll just
4 quickly go over some of this information,
5 particularly that of the collector as revealing,
6 and then the fact that the clan presented
7 completely different historical information about
8 the origin and the significance of this object,
9 which I think is important to note. This is a
10 named crest object. The blanket was made for and
11 owned by the Snail House. It was made by a named
12 individual from a Kake clan, which is also named.
13 The original owner also owned other items of
14 at.óowu in this collection, including the Sun mask,
15 the Owl mask, the Gunakadeit mask and the Raven
16 head cover.

17 The crest was transferred – the history
18 provided by the collector, the crest was
19 transferred to Mt. Fairweather House leader by a
20 slave in return for his freedom, and a house screen
21 and a song were transferred. What's interesting
22 about this is the commentary on that – provided by
23 the collector on that historical event that was the
24 origin that he attributes to this object. This
25 speaks to the issues we are discussing here and

1 discussed this morning, so I will take a minute to
2 go through this, and I think it's enlightening.

3 He said the T'akdeintaan were not justified in
4 making a claim to the Whale crest because the
5 transfer did not involve the unanimous consent of
6 the clan, the other clan. And while it is likely
7 that the clan would have made an offer of something
8 of value to redeem their member, it would never
9 have been the whale, the crest, for reasons, one,
10 that it was too valuable. And the measures of
11 value he cited were – had marked their relationship
12 to another clan who have the Whale crest, a very
13 important clan in Klukwan, the Gaanaxteidí, and
14 also it would cost them lives without number to
15 maintain the whale in its prominent position. So
16 it had great value and too valuable to give up in
17 this manner. So he says again that to transfer the
18 whale would have required the consent of the whole
19 nation to do that. So that was in 1924 he was
20 writing that about a historical event. We don't
21 know how old, how long ago that might have
22 happened. Well, maybe we do through the collecting
23 cards.

24 The point – the other point I wanted to make
25 is that the clan has a very different story of the

1 origin and the significance of this crest relating
2 to the death of a named clan member who was hunting
3 whale and was killed in the hunting whale, and
4 that's kind of the origin of the tail, which is the
5 hallmark of this design, the diving whale in the
6 name. And it is symbolized by the tail of the
7 whale. The clan member – clan members composed a
8 mourning song, which is known as the "Whale Hat
9 Song," which is performed by the clan. The clan
10 right to the Whale hat was recorded by
11 anthropologists in Sitka in 1904 and in Yakutat in
12 1952 and '54, and the Whale hat was documented by
13 Krause in Hoonah in 1882. So it goes back a ways.
14 The whale's tail design and the Whale hat was
15 recorded by Swanton in Sitka in 1904, and they were
16 specifically identified as belonging to the Snail
17 House. Other whale designs in face paintings and
18 on a house front belong to the clan. So the Whale
19 crest was used in more than one house group within
20 the clan. And the other thing that's interesting
21 is that one of Archie White's Tlingit names, the
22 one that's actually cited in the museum records
23 associated with the story of the acquisition of
24 this crest refers to the whale, refers to the hairy
25 stuff inside the mouth, as Kenny explained, or

1 baleen. Do you want to say that name?

2 KEN GRANT: (Native Alaskan language), inside
3 the mouth, hair inside the mouth.

4 CHUCK SMYTHE: Okay. So that's - you know,
5 there's a lot of evidence that this was a crest, an
6 important crest of the clan. I just wanted to
7 point that out.

8 **RON WILLIAMS**

9 RON WILLIAMS: Mr. Chairman, if I may, Chuck
10 mentioned little items, just a little story my aunt
11 told me. She's gone now. She had put a blanket
12 into the T'akdeintaan collection, and I asked her
13 why she did that. She said she used that blanket
14 during a very important ceremony, important to the
15 entire village of Hoonah. So it became sacred to
16 her and to the rest of the clan, so she donated it
17 into the collection of the T'akdeintaan people.
18 And when you look at the little collections, the
19 same thing happened to them. They were not bought
20 or paid for by the clan, they were put in there by
21 clan members who did something significant like
22 that.

23 Now the whale, my same aunt, we have a - in
24 Hoonah, what we call a clan workshop, and that's to
25 provide information to our youngsters about

1 ourselves and themselves. Like I mentioned
2 earlier, we have seven house groups in the
3 T'akdeintaan Clan. At one time we had twelve. But
4 the question was which was the first house group of
5 the T'akdeintaan people? And the Elders at that
6 time put their heads together and they line out all
7 of the houses, you know, which was first, which was
8 second, which was third, and they said the
9 T'akdeintaan, the T'akdeintaan Hit, which was
10 founded out of Lituya Bay, not in Hoonah, but
11 Lituya Bay, several hundred years ago. They used
12 the crest Whale because they did hunt whale out in
13 that area, out on the ocean. She also said for
14 that reason all of the T'akdeintaan people can use
15 the whale as their crest. The T'akdein Hit was the
16 very first T'akdeintaan House group. The second
17 was the Mt. Fairweather, which I think he pointed
18 out we were the first. That's not correct, not in
19 accordance with the Elders of years ago. Thank
20 you.

21 **DAVID KATZEEK**

22 DAVID KATZEEK: Just one more real quick note,
23 we've been using the word *at.óowu*, and Chuck
24 mentioned about some young men dying, did you
25 reference that? And that is why it's called

1 at.óowu. That artifact was obtained by the death
2 of a member of the T'akdeintaan Clan. And so they
3 created that and that is what the price was that
4 was paid for that object. So I wanted to be really
5 clear that at.óowu, some people say that it's only
6 when you put money on the table that that is
7 at.óowu. When you actually – when the life of an
8 individual paid for that object, that object was
9 well paid for. Yes, putting money on it at a party
10 really is what is called an initiation of that
11 object, recognition, acknowledgement by the other
12 (Native Alaskan language), is what it's called, the
13 opposite clans witness what's happening. Thank
14 you.

15 CHUCK SMYTHE: There's another Whale crest
16 item, which is – I'll be really – I'll just do one
17 more little one. It's another Whale crest item in
18 this collection that's called a Dance Collar or a
19 bib, just point that out because again, a lot of
20 times little objects that are like that are
21 considered less significant. But here is the
22 history behind it.

23 Another object that might be viewed that way
24 is the Staff Head, the Raven Staff Head, number
25 6843. The museum again in its classification

1 considers this not a crest object, which is not a
2 primary object type. The Raven is a moiety crest
3 so it's not a main crest, and so it doesn't meet
4 the statutory criteria for either type of object.
5 But clan members and the literature say that these
6 were used as a top ornament on a chief's or song
7 leader's cane or staff. Crest object representing
8 the clan for the public display of clan identity
9 during *koo.éex'* and other types of memorials,
10 carried by chiefs when they enter the *koo.éex'* and
11 perform mourning songs to hold them up. Song
12 leaders use such staffs to direct the singing of
13 clan members. Canes and crest hats were the most
14 highly valued items, according to Swanton. And
15 today, canes and staffs serve to hold up the lead
16 singer and give them strength during mourning
17 songs. And the clan has – oh, the other point is
18 the clan has adopted several Raven crests related
19 to Mt. Fairweather, such as the Black Raven
20 representing the ocean outside of Lituya Bay. So
21 even though this is a moiety crest, there are many
22 important Raven *at.óowu* in this collection. Thank
23 you, in the interests of time.

24 MERVIN WRIGHT, JR.: I want to say thank you to
25 the panel here. We do have a Wendy White that's

1 listed.

2 DAVID TARLER: Do you want to — would you like
3 to take a five-minute break, Mr. Chairman?

4 MERVIN WRIGHT, JR.: Yeah, I'd like to take a
5 five-minute break at this time.

6 DAVID TARLER: Thank you.

7 MERVIN WRIGHT, JR.: I want to thank the
8 panelists here. I appreciate your explanation and
9 detail of your testimony. Thank you. Five
10 minutes.

11 **BREAK**

12 MERVIN WRIGHT, JR.: Those of you that are in
13 earshot of my voice please take your seats. Review
14 Committee members, if you make your way back up to
15 the stage.

16 At this point we are on the second half of the
17 Hoonah Indian Association, Huna Totem Corporation,
18 and University of Pennsylvania Museum of
19 Archaeology and Anthropology dispute. And we have
20 Wendy White representing the University of
21 Pennsylvania Museum of Archaeology and
22 Anthropology. So at this time I'll turn it over to
23 you.

24 WENDY WHITE: Thank you, Mr. Chairman. Should
25 I wait for the other members of the review panel to

1 hear this?

2 MERVIN WRIGHT, JR.: I think you can proceed.

3 I mean, we're going to have this on the record, you
4 know. Certainly five minutes, five minutes.

5 WENDY WHITE: So are we going to wait or are we
6 going to start? I'm sorry?

7 SHERRY HUTT: (Comment inaudible.)

8 WENDY WHITE: I think I would be more
9 comfortable if the committee were actually here.
10 Thank you.

11 MERVIN WRIGHT, JR.: They may be out front. I
12 think I had seen them heading in that direction at
13 break time.

14 SHERRY HUTT: Mr. Chairman, on behalf of the
15 program, we have an issue. The one side was
16 allowed a certain amount of time. If the other
17 side is not allowed the certain amount of time and
18 has to go, then I would ask that you would cut off
19 the — you know, if there are questions or issues
20 with the questions I'd ask that you would cease out
21 of fairness so that both parties have the same
22 amount of time.

23 The guards — we are arranging to keep the
24 guards in the building for a period of time but
25 whatever it's going to cost, we'll be paying their

1 salaries in about 30 minutes. We can deal with
2 that. Out of a sense of fairness I want to make
3 certain that both sides have an equal opportunity
4 to make a presentation.

5 As to where the Review Committee members have
6 gone to, I do not know, but I would ask that one
7 party not be required to make a presentation to
8 less than a full committee when the other party was
9 given an opportunity to present to a full
10 committee.

11 MERVIN WRIGHT, JR.: Thank you. Certainly
12 appreciate that. The other matter that we're
13 dealing with is, you know, the time that has been
14 allowed for the presentations and clearly the
15 amount of time that has been allowed for the prior
16 presentation, you know, we'll certainly have to
17 provide that same opportunity for fairness and
18 balance in the presentation of this issue.

19 So our committee members are present. So you
20 may proceed, Ms. White.

21 **PRESENTATION: UNIVERSITY OF PENNSYLVANIA MUSEUM OF**
22 **ARCHAEOLOGY AND ANTHROPOLOGY MUSEUM**

23 **WENDY WHITE**

24 WENDY WHITE: Thank you, Mr. Chairman. My name
25 is Wendy White. I'm the Senior Vice President and

1 General Counsel of the University of Pennsylvania,
2 which owns the University of Pennsylvania Museum of
3 Archaeology and Anthropology. I'm here today with
4 my colleague, Brenda Frazer.

5 Let me start by thanking the Review Committee
6 for inviting us to present our information in this
7 forum today. I want to make it clear at the
8 beginning that we are here out of our deep respect
9 for the Tlingit people, for the traditions and
10 culture of the Tlingit people, and for this Review
11 Committee. The Penn Museum has long been committed
12 to serving our mission of education, scholarship,
13 and service, in new and creative ways that support
14 Native American communities. We have a long
15 history of working productively and successfully
16 with Native peoples and cultures and fostering
17 cross-cultural understanding of the Indigenous
18 peoples of American. That is our mission.

19 We have a special relationship with the
20 Tlingit people of Southeast Alaska. This is due in
21 large part to our Tlingit curator, Louis Shotridge.
22 Mr. Shotridge worked for the museum for two
23 decades, from 1912 to 1932. He recorded Tlingit
24 histories, preserved Tlingit heart and culture and
25 language during a transformative era in Tlingit

1 culture. Because of his vision, many Tlingit clan
2 histories and crest objects were preserved for
3 future generations. These objects were preserved.
4 They were not lost.

5 The museum is today actively working on
6 several projects with Tlingit peoples. These
7 include the creation of an online digital archive,
8 an NEA-funded book project on Tlingit baskets, and
9 a new exhibit entitled "Native American Voices," in
10 which ten Tlingit individuals are active
11 participants.

12 The Penn Museum has been responsive and
13 enthusiastic in its compliance over the years with
14 NAGPRA. Since its passage in 1990, the museum has
15 mailed over a thousand letters to federally
16 recognized tribes informing them of our holdings
17 and extending invitations to consult with our
18 museum people. As of October 10, 2010, 39 formal
19 repatriation claims seeking the return of
20 collections have been received and 24 repatriations
21 have been completed, resulting in the transfer of
22 232 sets of human remains, 750 funerary objects, 14
23 unassociated funerary objects, 19 objects of
24 cultural patrimony, 16 sacred objects, and 1 object
25 claimed both as sacred and an object of cultural

1 patrimony.

2 In compliance with the law, Penn Museum's
3 staff has worked diligently and vigorously and
4 faithfully to inventory and research our
5 collections. The staff has worked to conform,
6 consult, and cooperate with tribes about the items
7 in our care. We have observed and listened to
8 Native representatives. We hear them tell us about
9 the objects in our collection and this effort has
10 been particularly rewarding and important for the
11 Penn Museum and its mission. In a real sense, all
12 of the work that we have done with the Native
13 American peoples have brought these collections to
14 life.

15 What brings us here today is the claim by the
16 Hoonah Indian Association for all of 50 items that
17 were once in the Snail House in Sitka, Alaska, and
18 one object that was the — which is known as the
19 Marmot Frontlet. So it's 49 single objects plus 1
20 additional object. I want to say at the outset
21 that while this is referred to from time to time as
22 the "Snail House Collection," it is only a
23 collection in the sense that Louis Shotridge bought
24 these — purchased these objects from Archie White
25 of the Snail House at a particular moment in time.

1 He did not by any means buy all of the objects in
2 the Snail House at the time. Indeed, there were
3 particular objects, the heirlooms that he did not
4 purchase, because Archie White did not sell them.
5 Archie White knew what was alienable and what was
6 not. And so to speak of the Snail House Collection
7 is only a term that we use now to describe the
8 items that Archie White determined under Tlingit
9 law in the 1920s were appropriate to alienate to
10 the museum.

11 It is true that the Hoonah claim is the
12 longest-running claim in the museum's history.
13 There are many reasons for this. The claim began
14 as a claim from the Huna Totem Corporation and then
15 became a competing claim between the Hoonah Indian
16 Association and the HTC. This competing claim, in
17 which the University of Pennsylvania was not
18 involved, took six years to resolve. In addition
19 the earlier versions of the claim failed to address
20 the individual objects and treated them in groups,
21 not providing the museum with sufficient
22 information to fairly and completely evaluate the
23 claim. The revised claim addressed some of these
24 issues, and we greatly appreciate and understand
25 the time that was taken by the clan to provide us

1 with this information. The museum, in turn, looked
2 at all of the information provided, worked long and
3 hard to come up with a fair and appropriate
4 resolution under the terms of NAGPRA and in the
5 spirit of NAGPRA.

6 In the end, the museum recommended to the
7 university trustees, and the trustees agreed in
8 June 2009, to return eight catalogued items to
9 Hoonah and to further establish what we believe to
10 be a creative solution for the remaining objects,
11 which was to establish a joint curatorial
12 arrangement where the other objects, all of the
13 other objects, to be clear, would be resituated in
14 Sitka, Alaska. In addition, we developed
15 educational and cultural exchange programs that we
16 hoped both would be beneficial to the museum and
17 the public we serve and to the Tlingit people.

18 Our proposal was formally rejected.
19 Nevertheless, it is important for this committee to
20 understand that we determined to repatriate the
21 eight objects that our committee determined to be
22 either objects of cultural patrimony, sacred
23 objects, or both. We prepared the Notice of Intent
24 to Repatriate. It has been submitted to the NAGPRA
25 Office on September 24, 2010. We expect that

1 notice to be published imminently. We don't have
2 any reason to believe that it should be held up for
3 any reason. As soon as the notice is published and
4 the statutory deadlines are met, we are excited
5 that we are able to resolve that part of the claim
6 by repatriating these eight objects of central
7 importance or sacred use or both to the
8 T'akdeintaan Clan.

9 Before the further discussion of the
10 individual details of the claim, I want to spend a
11 moment on the museum's broader relationships with
12 the Tlingit people. This is not the only
13 relationship we have, and it's important to
14 understand the other relationships in the context
15 of this claim. In the past decade, the museum has
16 developed a program with the Central Council of
17 Tlingit and the Haida Indian Tribes of Alaska for
18 loaning objects for use in memorial potlatches.
19 This has been important to the clans and an
20 invaluable way for us to gain a further
21 understanding of the meaning and use of the objects
22 in the culture.

23 On five occasions, members of the University
24 of Pennsylvania staff have traveled to Alaska
25 bringing to memorial potlatches objects that have

1 been requested by these clans. In 2003, 2004,
2 2005, 2006, and again in 2010, objects were brought
3 by museum personnel to the potlatches. These
4 experiences have not prohibited, barred or
5 interfered with repatriation. On the contrary,
6 they supplement our understanding and they lead to
7 repatriation when claims are made. So for example,
8 and relevant to the dispute here, there was a claim
9 made by the Kaagwaantaan and the Luknax.ádi Clans
10 in Sitka, Alaska, for some of the objects that we
11 shared. The university found that 8 of the 11
12 objects claimed by these two clans satisfied the
13 definitions of either objects of cultural patrimony
14 or sacred objects or both, and proposed a joint
15 curatorial agreement of the same nature I just
16 described for the remaining 3 objects. The
17 university also made clear that we hold the right
18 of possession for these articles as well. The
19 university trustees adopted this resolution, and I
20 am very pleased to say that those clans have
21 accepted this, what we believe to be, creative
22 proposal, which benefits both the Native peoples
23 and the university's mission.

24 In this context, let me return to the claim
25 made by the Hoonah. Over the years there has been

1 some confusion about the numbers of objects in this
2 claim. This discrepancy is a result of
3 inconsistencies over time in the museum cataloguing
4 – the difference between the museum cataloguing
5 numbers and the number of physical objects. So for
6 example, there is a headdress that physically has
7 two pieces, so it has one catalogue number but it
8 has two objects. So that in our repatriation of
9 the eight objects, there are actually nine physical
10 pieces that are being repatriated. For ease of
11 reference here, I will refer to the objects under
12 discussion using their catalogue numbers.

13 Six of the items that were claimed by the clan
14 were determined by our committee to be sacred
15 objects. The Owl of the Heavens Mask, NA6831, is
16 associated with Mt. Fairweather, a prominent place
17 of reverence within the Tlingit landscape and an
18 important crest of the clan. The mask was
19 commissioned by an early housemaster at Drum-side
20 town, now called Hoonah, and when the Owl of the
21 Heavens helping spirit came into the shaman, the
22 mask embodies one of the helping spirits of the
23 first shaman of the clan. This is the first item
24 that the committee determined to be a sacred
25 object.

1 The Commander of the Tide Mask, catalogue
2 number 6832, embodies another important clan crest,
3 the Raven, of which you heard others speak. And
4 the name of the mask was used by housemaster Archie
5 White and continues to be used by the housemaster
6 in line for religious ceremonies. The mask was
7 purchased by Archie White from another clan in a
8 1876 memorial potlatch. The mask is associated
9 with the Raven's control of the ocean tides.

10 The Ravine Frontlet, catalogue number 6835,
11 incorporates the important clan crest of
12 Mt. Fairweather. The headdress name, Géelák'w,
13 refers to the past that divides the two peaks of
14 Mt. Fairweather. The headdress is also associated
15 with a mythic event that occurred when Raven the
16 Creator lured the King Salmon. The headdress was
17 owned by *Qa'tcxut-ti* of Snail House and was made
18 for one of the rebuildings of the Snail House.

19 The Raven Head Cover, 6836, also incorporates
20 the Raven crest. This object was commissioned by
21 an early housemaster of the Snail House and is
22 documented as having been passed down to two
23 subsequent housemasters.

24 The Ceremonial Rattle, also known as the Loon
25 Rattle, 6845, represents the helping spirit of the

1 first shaman. It was owned by *Kè-hinúk*, of the
2 Snail House family. Rattles today are used as part
3 of the shaman's paraphernalia and the research
4 indicates that shaman's rattles are used during the
5 singing of solemn songs in memory of a dead shaman
6 during the memorial potlatch.

7 And finally the Wooden Pipe, it was used by
8 the T'akdeintaan Clan at funerals to spiritually
9 feed the deceased and to evoke the spirits of clan
10 ancestors.

11 [Cell phone ringing and answered by Counsel
12 Walter Echo-Hawk.]

13 WENDY WHITE: Research reveals that carved
14 pipes were loaned to high ranking individuals for
15 use at the smoking feast for the dead, one aspect
16 of the traditional memorial potlatch that took
17 place –

18 WALTER ECHO-HAWK: I'll try to call you later.

19 WENDY WHITE: – over several days.

20 Excuse me. I'll wait for the phone call to
21 end.

22 WALTER ECHO-HAWK: Okay. Thank you. Bye.

23 WENDY WHITE: Thank you.

24 One of the objects in the collection the
25 committee determined to be an object of cultural

1 patrimony, and that's the Old Man of War Box Drum.
2 This was documented by Louis Shotridge as the first
3 heirloom object in the possession of Snail House.
4 It was owned and maintained as a possession of the
5 house through time. The drum is carved to
6 represent the helping spirit of the first shaman,
7 and we know that historic drums of this type were
8 used by the Tlingit in healing and marking
9 community events.

10 There was one object in the collection that we
11 concluded was both cultural patrimony and a sacred
12 object, and that is the Lituya Bay Robe, 6829. It
13 is a painted garment made of caribou hide that
14 depicts an allegorical event that occurred at
15 Lituya Bay. Lituya Bay is a specific place on the
16 landscape north of Hoonah Village that is
17 associated with the origins of the Snail House
18 family. Commissioned by an early Snail House
19 master, the robe documents the near drowning of a
20 Tlingit hunter who clung for life on a reef
21 submerged beneath the bay's outrushing tide.
22 Shotridge recorded that story and the robe was
23 commissioned metaphorically to represent the
24 onrushing tide of modernity that was sweeping away
25 Tlingit society and culture. The robe is a charter

1 for the clan's ownership of its ancestral home in
2 Lituya Bay.

3 I go through each of these objects to show how
4 carefully each of these objects was considered, the
5 documentation that we have, the respect that we
6 have for the traditions of the Tlingit people and
7 the T'akdeintaan Clan. And it's for these reasons
8 and because of the information we were able to
9 document through experts, through the presentations
10 from the clan, through our own investigation at our
11 potlatches that we were able to determine that
12 these objects in fact met the statutory definition.

13 As made clear in our response to the National
14 Park Service, which you all have before you, the
15 museum proposed the repatriation of each of these
16 objects, and the recommendation was based on a
17 weighing of two findings. First, the museum found
18 based on all the evidence that they met or more
19 likely than not met one of the statutory
20 definitions. Second, the museum concluded, for
21 reasons I will discuss in a moment, that we have
22 the right of possession, which is a statutory term
23 under NAGPRA that you today are asked to consider.
24 Nonetheless, even having determined that the museum
25 has the right of possession under the statute,

1 given the significance of these objects in
2 contemporary culture, Penn's ongoing relationship
3 with the Tlingit people, the committee recommended
4 the return of these eight catalogued objects, even
5 though not required under the terms of the statute.
6 And as I said earlier, we have prepared a notice to
7 repatriate those objects and hope to be able to do
8 so in the very near future.

9 The museum has also offered to resituate the
10 remaining objects in Sitka, Alaska, and to work
11 with the clan to make that happen. Our response –
12 the response that we got to this – what we thought
13 to be responsive and creative resolution was a
14 claim that all of the objects, all 50, are *at.óowu*,
15 they all meet both statutory definitions, and that
16 the university does not have the right of
17 possession.

18 We regret that response. The university
19 worked hard on many occasions looking at the
20 documentation presented, the information and
21 documentation that Louis Shotridge provided, and it
22 is very detailed and very specific and very unusual
23 in these claims to have the kind of information we
24 have. And it's because Louis Shotridge, who was a
25 Tlingit and who knew and understood the culture and

1 knew and understood what was alienable and what was
2 not, that he documented what it was that he was
3 doing, what he paid, and what the stories were.

4 The repatriation committee looked at detailed
5 literature. There is considerable literature. Our
6 bibliography is contained as part of our response
7 to this committee, and you will see a lengthy
8 bibliography that includes the expert work of
9 Sergei Kan and de Laguna, each of whom know and
10 understand and are experts in Tlingit history and
11 culture and the law that applies.

12 Much has been said about these items having a
13 status in Tlingit culture known as *at.óowu*. We
14 discussed the *at.óowu* procedures at length,
15 referring to some of the same literature referred
16 to by the claimants, and you will find that
17 discussion in our response to the claim. What's
18 important to remember is that *at.óowu* is a strict
19 and standardized protocol of the Tlingit people
20 whereby an object is commissioned, made by an
21 opposite clan member for a specific occasion,
22 brought out and physically displayed, publically
23 paid for, and given a name. It is not a case of an
24 object just being used at a potlatch. *At.óowu* has
25 a very specific meaning, and we looked carefully at

1 the evidence to see whether each of these objects
2 was fairly categorized as *at.óowu*. This was not
3 the end of the analysis but it was clearly an
4 important part of the analysis, and it was where
5 the committee started. And what it concluded
6 looking object by object was that some of these
7 objects met that standard and most did not.

8 The next stage of the analysis was to look at
9 the actual definitions in NAGPRA. Was the object
10 communally owned by the clan at the time of the
11 sale? Not what today's culture would have us
12 believe may have happened and that may be the case
13 now, but what was the case at the time and what is
14 the evidence of the rules at the time, the rules
15 under Tlingit culture? Was the object of central
16 historical, traditional, or cultural importance at
17 the time of sale? That comes right out of the
18 statute, centrality. Not every object that comes
19 from a Native American community is an object of
20 cultural patrimony. The statute was careful to
21 strike a balance, and so it instructed museums to
22 look at centrality. Does the object have an
23 ongoing cultural significance today? Those were
24 the questions that this committee addressed in
25 determining whether an object met the standard for

1 cultural patrimony.

2 The evaluation then unpacked the NAGPRA
3 definition of sacred object and the committee asked
4 five questions, and the five questions come right
5 from the regulations. Is the object needed today
6 by a traditional religious leader? Is the object
7 needed for a traditional religious ceremony or
8 trial? Is the object related to an identified
9 historic ceremony? And finally, and I want to
10 emphasize this point because in the presentation
11 you just heard this point was omitted, and that is
12 has the object in the past been devoted to a
13 ceremony, a specific ceremony? So that the
14 statutory guidance tells us that we look both at
15 the past and at the present. And when we look at
16 the past, we can't look at it from today's eyes.
17 We have to look at it from the evidence we have,
18 and that is what our committee did.

19 The next stage of the process was to analyze
20 right of possession, and I will get to that in a
21 moment. As you know, we concluded that the
22 university has the right of possession, but we did
23 not stop there. The committee, made up of scholars
24 and experts in Tlingit law and tradition and
25 culture, felt a responsibility as an American

1 anthropological museum to look hard at the cultural
2 significance of these items and the significance to
3 the T'akdeintaan Clan. And recognizing their
4 importance and with ongoing respect for the people
5 and our interest in a continuing collaborative
6 relationship with these people, we concluded that
7 we should repatriate eight catalogued objects, and
8 at the same time work to resituate the remaining
9 objects in Sitka, Alaska.

10 The second principle issue, other than the
11 definitions that is before this committee today, is
12 the right of possession. The repatriation
13 committee determined that the claimants did not
14 present information to support a finding that the
15 university does not have the right of possession in
16 question, and that is the statutory standard. The
17 evidence educed by the committee regarding the sale
18 and acquisition of objects reveals that Archie
19 White sold the Snail House objects to Louis
20 Shotridge in 1924 for five hundred dollars.

21 What's relevant to this analysis is Tlingit
22 law and custom at the time, not today, but what was
23 the law at the time, recognizing that this is a
24 culture that doesn't have statutory law like NAGPRA
25 but they have traditions and practice and culture.

1 Looking at that law as it existed in the 1920s,
2 Archie White had the authority to sell the
3 collection in his capacity as housemaster. There
4 is no evidence that this was a secret sale or that
5 Archie White lost standing in the community even
6 though the record and the evidence is clear the
7 community knew about the sale at the time. On the
8 contrary, he remained – he remained as housemaster,
9 President of the Holy Cross Brotherhood until his
10 death in 1939.

11 There is evidence, and we agree, that later
12 members of the Hoonah community regretted the sale,
13 and in fact, Joe White, Archie White's son, made a
14 public apology in 1958. But the issue here is at
15 the time of alienation in 1924, what was the
16 practice, what was the common law? And although
17 the claimants argue that there was this continuity,
18 the evidence shows quite clearly to the contrary.
19 The housemasters and chiefs were selling these
20 kinds of objects. They were not outlaws. They
21 were respected leaders of the community. And they
22 didn't sell all of the objects. They sold the
23 objects that they believed to be alienable at the
24 time, and they had the authority under Tlingit
25 culture and common law and practice at the time to

1 make that decision. We have provided the Review
2 Committee with a DVD which has Katherine Mills, who
3 states quite clearly that the Brass Hat, and by
4 implication, the rest of the Snail House objects,
5 was sold with clan approval.

6 So contrary to what the claimants are telling
7 you today, we have evidence of clan approval, but
8 it is not actually required that we do so, because
9 the question at the time is what was Tlingit law,
10 and it was not as you have heard from the claimants
11 that all of these objects were communally owned.
12 That is not what the evidence shows. That is not
13 the common law of the Tlingit. That is not the law
14 in 1924, and to find otherwise is to deny an
15 important point, an important portion of Tlingit
16 history. It may be a part of Tlingit history that
17 they are regretting today and we understand that.
18 But that is not the question being addressed by
19 this committee.

20 In short, there's substantial historical
21 documentation. There are experts, Sergei Kan, de
22 Laguna. I should say a word that Goldsmith and
23 Haas, who are referred to by the claimants, spoke
24 or wrote about different kinds of community
25 property. They were talking about land. Land

1 acquisitions are quite different than these
2 objects. But the experts and the evidence shows
3 that at that moment in time given the influence of
4 the Alaska Native Brotherhood, the Russian Orthodox
5 Church, the Protestant Church, that Tlingit law
6 authorized and indeed encouraged the sale of these
7 objects.

8 While this may not have been the case in every
9 Tlingit community, historical documentation
10 demonstrates that it did occur and was the law and
11 common practice in Hoonah. This changing practice
12 was consistent with Tlingit law at the time, and
13 Louis Shotridge knew that. He negotiated for these
14 objects over a period of at least two years. There
15 was nothing secret. The clan knew and voluntarily
16 parted with these objects.

17 So after this careful analysis, the university
18 developed the proposal which I described above. We
19 had believed — we had believed that this resolution
20 would be a significant step forward and that we'd
21 be able to reach a final resolution with the
22 T'akdeintaan Clan. We were surprised and sincerely
23 disappointed when we received a letter that did not
24 say they wanted to further discuss some of the
25 objects, some of our categories. They did not want

1 to discuss a joint curatorial arrangement, which
2 would provide them with each of these objects in
3 Alaska, that they did not want to talk to us about
4 how we could reach a resolution. But the response
5 that we got was that every single one of these
6 objects is *at.óowu*, it is sacred, it is an object
7 of cultural patrimony, and the university does not
8 have the right of possession.

9 In very recent weeks, we have learned that the
10 Hoonah Indian Association may not have the support
11 of every member in the clan. Indeed, we have
12 received letters and testimony, and these letters
13 are in the materials we provided to you that
14 challenge the decision that was made in the letter
15 to us rejecting our offer. John Martin, the
16 housemaster of Big Sockeye House, has written to
17 the museum to express his concern that HIA and HTC
18 are not the appropriate representatives of the
19 clan. He notes there's no current housemaster for
20 the Snail House, only a speaker, and it is his view
21 – and in Tlingit culture and history – they should
22 be represented by the housemaster. Teri Rofkar, a
23 member of the Snail House, has expressed her
24 concerns in writing about the appropriate protocol
25 and lack of transparency within the clan in their

1 response to our proposal. And Patrick Mills has
2 telephoned and written to express his concern that
3 these are not the appropriate representatives of
4 the clan. You have his letter in your materials.
5 He even provided the unsolicited DVD that indicates
6 that the clan knew, for example, about the sale of
7 the Loon Spirit Hat at the time. These letters all
8 appear in the binder.

9 I was not provided with a copy -

10 UNIDENTIFIED INDIVIDUAL: (Inaudible comment.)

11 WENDY WHITE: I was not provided with a copy of
12 Mr. Echo-Hawk's response that he handed out to the
13 committee today, until after he started speaking,
14 nor was I provided with the chart prepared by
15 Mr. Chuck Smythe until he handed it out to the
16 committee, so I'm somewhat at a handicap in
17 responding, but I want to make a few points that I
18 noted in response to what he presented to you this
19 afternoon.

20 Mr. Echo-Hawk said that the museum applied the
21 wrong standard. While I have made clear that the
22 museum actually followed the regulations and the
23 process articulated in NAGPRA and its regulations,
24 I want to address briefly each of his six points.

25 First, he said that we erred in considering

1 the collection one by one, he called that an
2 academic exercise, that we should have considered
3 the collection as a whole. We have a number of
4 responses to that, including as I said at the
5 beginning, this is not a defined collection. This
6 was a group of objects, among the objects owned by
7 the Snail House at the time. There are objects
8 that were not sold. The Mt. Tribe Dog Hat, the
9 Mt. Fairweather Women's Hat, the Raven Went Down to
10 the Bottlecap – I'm sure I pronounced that wrong –
11 Shirt. There were many heirloom items that were
12 not sold. This is not a single, defined
13 collection. But more than that, NAGPRA tells us
14 that we look at each of the objects individually,
15 and that is what we did.

16 Second, all of the objects are imbued with the
17 spirits and all are *at.óowu*. As I explained in my
18 remarks and in detail in our written papers,
19 *at.óowu* is a process. It is a defined process and
20 protocol. It does not apply to every object. We
21 believe that many of the objects among the 50 may
22 have been Archie White's personal objects. There
23 is no evidence that has been presented to us or to
24 you by the clan that each and every object, in
25 fact, is *at.óowu*.

1 Third, he criticizes what he calls our
2 artificial rankings, and I believe he's referring
3 to one of the elements that we considered, which
4 was the priority of the crests. As he well knows,
5 in Tlingit culture, there is a hierarchy among
6 crests, and that is one way under the statute that
7 you can consider centrality. As you remember,
8 objects of cultural patrimony are those which are
9 central to the culture. They are like the Zuni War
10 Gods. They are not every object made or found in a
11 Native American community. Using the rankings was
12 not the only decision-making factor, but to say
13 that it was inappropriate to look at Tlingit
14 culture and look at the priority and hierarchy of
15 crests and see whether or not those were contained
16 in these objects seems to me to be misguided.

17 Fourth, we have been told that we used the
18 wrong standard on alienability, and that you can't
19 look at practice at the time, but of course that is
20 mistaken. The common law, the oral tradition of
21 the Tlingit at the time in 1924, since there are no
22 written statutes, that's all highly relevant to
23 what was the law at the time. What were the rules
24 of engagement? And it is clear because of the
25 pattern and practice and because of the literature,

1 that there was at the time a view – a legal view
2 among the Tlingit clan that these objects were
3 alienable and the relevant question is not what
4 would they do today, but what was the common law
5 and practice at the time.

6 Fifth, we're told that we didn't properly
7 consider sacred objects because the religious
8 leaders today say that they would use every one of
9 them in a ceremony. Whether or not that is the
10 case, remember I highlighted before there is an
11 additional standard. It's not just the present,
12 it's the past. And if the evidence does not show
13 that these – all of these items were devoted to a
14 specific ceremony in the past, they don't meet the
15 standard. They don't meet the statutory standard.

16 And finally right of possession. Contrary to
17 the argument made today, we absolutely considered
18 tribal law, but we considered tribal law, not
19 tribal law of property rights, not tribal law as
20 reinterpreted today, but tribal law as it was lived
21 and understood at the time. There's a – there was
22 a claim, which I actually don't think is serious,
23 that there is no evidence that the seller was
24 Archie White, that there was an unknown seller.
25 The clan has gone back and forth on that, but if

1 you read all of the documentation, it is absolutely
2 clear that it was, in fact, Archie White, the
3 housemaster of Snail House, who made the decision
4 to sell these objects. Louis Shotridge's
5 documentation is clear, and if you look at all of
6 the surrounding evidence, which we have put in our
7 response, you will have no doubt that Archie White
8 made the decision and was, in fact, the seller.

9 And finally the argument is made that there is
10 no evidence that there was consent. Again, we
11 disagree. We believe there was evidence of – there
12 was both evidence of approval and there was
13 evidence that at the time Archie White had the
14 right to make this decision.

15 In conclusion, the museum remains committed to
16 resolving this dispute, and I want to emphasize
17 that the – this is an odd presentation for you to
18 decide or an issue for you to decide because we're
19 actually not disputing that these objects can be
20 returned to the clan in Alaska. What we are
21 disputing is how that return will happen.

22 We believe that under NAGPRA our analysis is
23 correct and clearly demonstrated and fully
24 supported by all of the evidence. Nonetheless, out
25 of respect for the Tlingit people and culture and

1 consistent with our mission, we are committed to
2 continuing to work if possible with the clan and
3 its leaders to reach a resolution of this matter.
4 I want to thank you for providing us with an
5 opportunity to respond today. We will look forward
6 to any guidance this committee can offer in helping
7 us to resolve the issue. But we too want to
8 emphasize, as did the museum before us, that under
9 NAGPRA since we've made the case on right of
10 possession it will not be helpful if this committee
11 finds otherwise. And we don't believe there is any
12 basis for doing so. But we do welcome your help if
13 it is at all possible in resolving this
14 longstanding dispute. Thank you for your time.

15 DAVID TARLER: Mr. Chairman, at this time, I
16 recommend that we hear the presentation of Veronica
17 Pasfield, and that afterwards the Review Committee
18 have an opportunity until 6:00 p.m. to ask
19 questions of the parties.

20 MERVIN WRIGHT, JR.: Okay. I agree. So at
21 this time, we'll ask Veronica Pasfield to come
22 forward.

23 WALTER ECHO-HAWK: (Inaudible comment.)

24 MERVIN WRIGHT, JR.: We need to — she's got
25 some serious time constraints so we'd like to bring

1 her on as soon as possible. Thank you.

2 **PRESENTATION: BARRIERS TO THE IMPLEMENTATION OF**
3 **NAGPRA ENCOUNTERED BY THE BAY MILLS INDIAN**
4 **COMMUNITY**

5 **VERONICA PASFIELD**

6 VERONICA PASFIELD: (Native American language.)
7 I have some information to share as well. There
8 should be at least one extra there for the Review –
9 or for the National NAGPRA Program's records.

10 First, I want to say *Miigwetch*, and I will
11 sort of dispense with all of the normal
12 formalities, but I do feel it's important for me to
13 introduce myself in my language as a part of my
14 cultural protocol and acknowledgement of my own
15 lineage.

16 I'm Veronica Pasfield, (Native American
17 language). My name is Veronica Pasfield. I'm
18 Crane Clan. I'm Ojibwe, and I'm an enrolled member
19 of Bay Mills Indian Community.

20 I'm here today as a NAGPRA representative for
21 my tribe. I've asked – I've been asked to come on
22 their behalf and to represent our concerns and to
23 describe our barriers to compliance experienced
24 with the University of Michigan Museum of
25 Anthropology. As many have expressed I just want

1 to say (Native American language), thank you very
2 much for the Review Committee's support of the new
3 regulations. Our responsibility to this
4 stewardship of our ancestors is very much tied to
5 land and claims around land, and the regulations
6 really reinforce the spirit and the letter of
7 NAGPRA in our view.

8 You'll see in the proposal that I submitted in
9 September that is hopefully in your binders for
10 today's presentation that we are coming to describe
11 two barriers to compliance experienced by Bay Mills
12 Indian Community with the University of Michigan
13 Museum of Anthropology. They are centered around
14 nonconsultation during the inventory process, and
15 the transfer of CUHRs from the University of
16 Michigan Museum of Anthropology, a NAGPRA-
17 responsible party, to a private individual,
18 Professor Andy Merriwether, a non-NAGPRA-
19 responsible party. Professor Merriwether is
20 researching, doing genetic research on the remains
21 in Michigan, including remains that Bay Mills has a
22 connection to, and he was allowed to remove bones
23 from campus as an individual. I will describe each
24 in a moment but I want to just very quickly give
25 you a sense of where I'm coming from quite

1 literally.

2 Bay Mills is a federally recognized tribe. We
3 were reorganized under the Indian Reorganization
4 Act of 1935. We're located on the southeastern
5 corner of Lake Superior. The families that now
6 comprise Bay Mills Indian Community were among the
7 first to have contact with the Europeans in the
8 Great Lakes Region. Since the early 1600s, the
9 rapids at Sault St. Marie and our homelands
10 surrounding them were crucial to the economic and
11 military success and even survival of the first
12 Europeans coming into our region, as well as
13 Americans. Bay Mills Indian Community leaders,
14 including my direct grandfathers, signed the
15 treaties now required under 43 CFR 10.11, to make a
16 claim of aboriginal land title to remains in
17 Michigan. My appearance here today is understood
18 as a continuation of that work of my grandfathers.

19 Bay Mills knows that NAGPRA — Bay Mills knows
20 NAGPRA to be a part of a long struggle against
21 Colonial violence. Sometimes that violence comes
22 in the form of museums and collecting and research.
23 Bay Mills began this sort of work of NAGPRA in the
24 1820s after the United States victory in the War of
25 1812, the Army demanded, the U.S. Army demanded to

1 build a fort on our burial grounds in the rapids of
2 Sault Ste. Marie in the 1820s. Soon after, our
3 gravesites were looted and the ancestors who were
4 laid to rest there, many of them were chiefs, some
5 of them were removed to the Smithsonian collection.
6 Thanks to NAGPRA and the sort of work that is done
7 here and by Michigan's repatriation officers, they
8 have been returned to peaceful graves I'm happy to
9 report.

10 Okay, and now to the situation within the
11 University of Michigan Museum of Anthropology.
12 University of Michigan Museum of Anthropology,
13 according to the information that's been posted
14 that we have available to us, holds approximately
15 1,600 MNIs and at least 4,000 AFOs. The vast
16 majority of their holdings came from sites in the
17 state of Michigan. After the new regs were
18 announced, Bambi Kraus, of the Tribal Historic
19 Preservation Office, was interviewed in "Indian
20 Country Today," and she expressed something that is
21 very common or very similar to how Bay Mills has
22 experienced its relationship with the University of
23 Michigan Museum of Anthropology. What Ms. Kraus
24 said, and I quote, "that the new rule is being
25 suggested as only beginning some institutions on a

1 path toward rudimentary information sharing is part
2 of the frustration many Natives feel," and to that
3 we say (Native American language).

4 So I'd like to discuss, and I will be as quick
5 as I can, the first barrier to compliance
6 experienced by Bay Mills Indian Community with the
7 University of Michigan Museum of Anthropology, and
8 that is nonconsultation. As this week's conference
9 has richly illustrated, tribal consultation not
10 only is required under the law, as many panelists
11 have identified, it is the heart of the law. Under
12 the law, no later than the time at which
13 investigation begins for inventories are tribes to
14 be consulted. Unlike many states in our region,
15 Michigan enjoys 12 – currently enjoys 12 federally
16 recognized Indian tribes. At the time that
17 University of Michigan began its inventory process
18 in 1992 there were quite a number of tribes that
19 were available. I can tell you the Bay Mills
20 Indian Community is – has been on this same road
21 certainly since 1934 and earlier. As other folks
22 who have presented today have said, we're not hard
23 to find. We're not hard to find at all, especially
24 if you like to play bingo.

25 During the UMMA inventory process in 1992,

1 which was begun in 1992, President Jeff Parker was
2 our tribal Chair. As you'll see from the enclosed
3 information, Jeff Parker is currently our tribal
4 Chair. The people who were involved with
5 repatriation in our community have lived there
6 their entire lives. They live there now. They're
7 there now. And they are also not hard to find.
8 They are mothers of very large families and they
9 are married to tribal leadership, which is also
10 very well known in our community.

11 Let's - just quickly looking at the
12 information that I'm giving you, the first thing
13 that you'll see on the top of your packet is a
14 letter from our tribal Chair to the University of
15 Michigan, from Jeff Parker. Jeff identifies in the
16 first two paragraphs that Bay Mills is very
17 concerned about the handling of consultation on
18 behalf - or with Bay Mills. He then goes on to
19 detail some other opposition that he - that our
20 community feels towards some further research
21 that's going on that I won't talk about today.

22 The next document that you're going - that you
23 see is the, quote/unquote, proof that was provided
24 by the University's - University of Michigan Office
25 of the Vice President for Research indicating the

1 proof that they have at the museum or that was
2 given to them by the museum that they did attempt
3 to consult with Bay Mills. As you'll see from the
4 letter, it's not on letterhead. It's addressed,
5 "Dear XXX." There's no signature. There's
6 nothing. So it's a blank form letter. And the
7 last piece you'll see from that particular bunch is
8 a postcard that shows that University of Michigan
9 Museum of Anthropology sent Bay Mills Indian
10 Community, Jeff Parker, something in 1992. And
11 somebody in the tribal office did receive some kind
12 of an envelope from the University of Michigan in
13 1992. We don't know if it contained this form
14 letter with which we would assume would be filled
15 out. We just don't know. And the Office of the
16 Vice President for Research cannot tell us for sure
17 what was actually sent to the University - or to
18 Bay Mills Indian Community. It could have been
19 football tickets. We have a pretty good football
20 team at U of M.

21 So even if we had been provided with one
22 letter in 1992 that had sought the consultation of
23 Bay Mills Indian Community during the inventory
24 process, Bay Mills Indian Community does not feel
25 that this meets the due diligence that is - has

1 been upheld within Federal Court in civil penalty
2 suits. So even in – so it's not good no matter
3 what, I guess.

4 You will also see in – well, we'll talk about
5 the things in the other packet in a moment. In the
6 minutes – something that we find kind of
7 interesting and confusing, in the minutes of the
8 April 1997 regents meeting for the University of
9 Michigan, there was a presentation by University of
10 Michigan Museum of Anthropology curator, somebody
11 who provided leadership on NAGPRA compliance for
12 the university, and I quote the minutes, "The final
13 inventory, which primarily includes unaffiliated
14 remains, was submitted on time in November of 1995,
15 making the University of Michigan one of the few
16 major institutions that completed the work on
17 time," unquote. Then it's followed by University
18 of Michigan Regent Power – his name is Regent Power
19 – he, quote, "expressed admiration for the
20 university's diligence in complying with the terms
21 of NAGPRA and for the sensitivity with which those
22 responsible have carried out this task," unquote.

23 So it's not clear to the – to Bay Mills Indian
24 Community if there is really an institutional
25 memory, what is the institutional structure for

1 accountability, especially coming down from the
2 regents, the governing body of the university
3 around this issue. It – as many people in this
4 room know, there is a tremendous amount of freedom
5 within our one research institution in particular
6 around the research of tenured faculty,
7 particularly ones with leadership positions within
8 their disciplines.

9 And if you read – and I didn't want to get
10 exhaustive about this because I'm not – we're not
11 claiming, we're merely describing barriers to
12 compliance. But something that when thinking about
13 what our barriers might be, there's a concern in
14 our community about the actual accountability,
15 transparency, etcetera, for leading research
16 faculty at institutions that are mostly focused
17 around research and privilege and fund research.

18 The second barrier to compliance Bay Mills
19 would like to call your attention to is NAGPRA's
20 prohibition of transferring CUHRs from
21 NAGPRA-responsible to non-NAGPRA-responsible
22 parties. According to documents provided by the
23 University of Michigan Office of the Vice President
24 for Research, the museum of Anthropology
25 established a, quote, ancient DNA laboratory in

1 1996. It was led by Professor Andy Merriwether,
2 who at the time was on faculty at Michigan and is
3 now at SUNY Binghamton. The faculty undertook
4 aggressive extraction of DNA and other materials
5 from ancestors taken from graves in Michigan
6 starting in 1996. As of my last meeting with the
7 University of Michigan last Friday, they still
8 don't know when that testing and that research
9 ended. They think, and to their best guess, it's
10 2001, but they don't know.

11 Until 11 days ago, the boxes that had the most
12 – the boxes themselves that the remains are in, the
13 cardboard boxes, were the most complete record of
14 what was actually taken out of the remains from the
15 ancestors. So there was not even a complete –
16 according to what is known by the Office of the
17 Vice President for Research as of last Friday, they
18 have not been able to locate actual records from
19 the University of Michigan Museum of Anthropology
20 that showed an accurate, complete database of what
21 research was actually occurring on their
22 collections. What we know is that there was a
23 bunch of writings on boxes, and I'll just show you.
24 You know, I don't know why I don't have a picture
25 of this. I thought that I had made some but I

1 guess I didn't, but if you want I can bring it up
2 closer. But this is an exterior of a box that is
3 typical. It's from the Juntunen Site, and as
4 you'll see there's all kinds of marker notations
5 made on there, in terms of what was taken. So
6 there will be the name of the bone, say left ulna,
7 and there will be a date. There are many initials
8 on here that are not attached to anybody that is
9 known by the University of Michigan yet. They're
10 trying to figure out who actually did testing. And
11 only as of last Friday, as I said, when we
12 concluded - Bay Mills concluded a consultation with
13 the University of Michigan was there even a 95
14 percent of a reconciled inventory of what's
15 happening. I'll talk about that in a second.

16 But according to documents submitted to Bay
17 Mills Indian Community by the Office of the Vice
18 President for Research at the University of
19 Michigan, Professor Andy Merriwether was allowed to
20 remove from the University of Michigan Museum of
21 Anthropology campus - and campus, other places on
22 campus perhaps, we don't know - DNA, osteological
23 material, to his new lab at SUNY Binghamton.
24 According to, again, correspondence with Bay Mills
25 Indian Community, the Office for the Vice President

1 for Research has indicated that no formal loan
2 process was undertaken, no documentation of what
3 was taken was initiated by the museum or the
4 university. And this was essentially, as they
5 called it, an informal loan from the museum to a
6 private individual, Professor Merriwether, who is
7 researching on these remains. He is a geneticist.
8 And I'm going to quote from one of the documents
9 that was given to us by the Office of the Vice
10 President for Research about this matter, quote,
11 "Although certain curators at the University of
12 Michigan Museum of Anthropology were aware that he
13 was taking materials with him on loan, no agreement
14 was entered into with the U of M with regard to any
15 formal transfer of or terms of use from the
16 samples." Quote, "No inventory exists at the
17 University of Michigan regarding the samples
18 Dr. Merriwether took with him," unquote.

19 And then the last thing that you'll see there
20 is a grant that was submitted by two faculty, one
21 at the Museum of Anthropology and this geneticist,
22 Professor Merriwether, on April 14th of 2000. As
23 you'll - if you read over the narrative of the
24 grant on the front page, what you'll see
25 essentially in the third paragraph is that the

1 faculty who are writing this grant are requesting
2 of the OVPR to fund wide-scale genetic testing and
3 extraction of the remains before the new regs go
4 into effect. They indicate that the Review
5 Committee had just submitted recommended
6 regulations to the DOI very recently and that it
7 was of the utmost urgency for the University of
8 Michigan and this ancient lab to be allowed the
9 funding to test the remains before they went back
10 to tribes.

11 There is more that we could say. We have a
12 lot – Bay Mills has a lot more information about
13 what is happening or what has happened, because of
14 our ongoing work with the University of Michigan,
15 which I'll talk about in a second. But because
16 this information is very new to the university,
17 it's very new to our tribe, I actually have
18 documents that our own tribal attorney doesn't have
19 yet, just because I'm here instead of driving up
20 and giving them to her. So we – hopefully this has
21 adequately described some of the barriers of
22 compliance on this.

23 I do want to though share something with you
24 in conclusion that's hopeful. According to the
25 evidence that I have shared with you and other

1 evidence that I have from the University of
2 Michigan, according to their own evidence, the
3 University of Michigan Museum of Anthropology's 20-
4 year legacy of noncompliance with Federal law is
5 clear in the minds of Bay Mills. But here's a
6 little bit of hope, for just over 200 days, the
7 University of Michigan Office of the Vice President
8 has demonstrated a commitment to grappling with the
9 spirit and the letter of this law. It's clear now
10 that the NAGPRA matters, NAGPRA compliance has
11 really been taken over by the Office of the Vice
12 President for Research for now, and a new committee
13 was formed last October to look at the issue of
14 culturally unidentifiable human remains and to try
15 to create new policy and procedure.

16 In fact, I can't speak to the timing of this,
17 but the University of Michigan Office of the Vice
18 President for Research knows I'm presenting today.
19 We told them a while ago that we would be
20 presenting at this meeting if allowed, and in
21 today's university newspaper, the Office of the
22 Vice President has announced some very hopeful new
23 policies and procedures that are much more in
24 keeping with what NAGPRA asks and requires of all
25 public institutions.

1 We've been in tentative dialogue with the OVPR
2 since April, and I am happy to report that I
3 conducted consultation, at least the first part of
4 a consultation that was focused on the documents
5 around sites that are connected to Bay Mills that
6 are of interest to us. And the consultation went
7 very well and we did get full disclosure and
8 transparency. And it's obvious to me anyway that
9 the University of Michigan is – out of the Office
10 of the Vice President for Research is trying very
11 hard to steer a very large ship into a more – a
12 compliant approach. However, we do remain
13 concerned that in an environment of a faculty-led
14 university that very much values academic freedom
15 and research, it's – it seems to be an ongoing
16 struggle to really sort of bring everyone on campus
17 into more compliant behavior. But like I said, we
18 are feeling hopeful.

19 There is also much to be hopeful for in terms
20 of – in a newly compliance and consultative
21 environment, including locating 1,500 missing AFOs
22 from the University of Michigan Museum of
23 Anthropology collection. They believe that they're
24 somewhere in the museum. They don't know where,
25 but they're looking. And the new regs certainly

1 make the work of Michigan tribes much, much easier.

2 Given the profound responsibility and
3 privilege – in conclusion, given the profound
4 responsibility and privilege of the stewardship of
5 our ancestors, Bay Mills feels it is our
6 responsibility to believe in the process, not
7 necessarily the people. Until a new process is
8 firmly established and put into practice at the
9 University of Michigan, Bay Mills felt it was
10 important to go on the record about our barriers to
11 compliance with the university, but we do remain
12 hopeful, and as I said, anybody who wants you can
13 look on the UMich.edu website and the OVPR has
14 announced new policies today. (Native American
15 language), *Miigwetch*.

16 MERVIN WRIGHT, JR.: Thank you. Are there any
17 questions of the committee members?

18 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

19 SONYA ATALAY: I have a few questions. I think
20 they're pretty brief, so they probably won't take
21 long response. I know that you're under time
22 restraints, if you have time to respond.

23 VERONICA PASFIELD: I do. I think I'm probably
24 going to miss my plane.

25 SONYA ATALAY: Okay. So first you gave us

1 evidence of this – the letter – this form letter
2 and then a postcard. And I'm just wondering, up
3 until you mentioned that you had consultation
4 recently –

5 VERONICA PASFIELD: Yes.

6 SONYA ATALAY: But is the concern of Bay Mills,
7 just to clarify, that this has been the only
8 consultation attempt with Bay Mills is this letter
9 that was sent out, that nothing else has happened?

10 VERONICA PASFIELD: Thank you for asking. Yes,
11 that's correct.

12 SONYA ATALAY: And I'm wondering if Bay Mills
13 has any indication of why. I mean, we've heard a
14 lot, particularly today with the GAO report, that a
15 lot of museums tried to get these inventories in on
16 time and they suffered from a lack of funds. And
17 I'm wondering if that's what the concern is here,
18 that this is related to a lack of funds on the part
19 of the University of Michigan, why they didn't
20 attempt consultation, if Bay Mills has ideas about
21 that.

22 VERONICA PASFIELD: So obviously we can't speak
23 for the University of Michigan, but I can share
24 with you something that was said during my
25 consultation last week, which is that they do have

1 financial constraints. However, when looking at
2 the totality of this picture, you have – we have
3 confirmed that the OVPR at University of Michigan
4 and LSNA, the college, each contributed \$50,000 to
5 do this DNA extraction. So we know that there is
6 funding available for the museum. To our
7 knowledge, there has never been a NAGPRA grant
8 applied for by anybody, any curators, faculty,
9 staff, at the University of Michigan Museum of
10 Anthropology. I know that a lot of the
11 universities and other institutions with large
12 collections declared many things unidentifiable to
13 meet the deadline, and then turned back around and
14 systematically applied for many grants and tried to
15 really do more thoughtful, thorough tribal
16 consultation. And to my knowledge and to the
17 knowledge of the people that I'm working with at
18 the University of Michigan, that was never enacted
19 by the University of Michigan, and given the
20 existence of this ancient DNA lab that they were
21 trying to establish, it makes one wonder what that
22 motivation was about.

23 SONYA ATALAY: And then I'm not sure from these
24 materials, but I think I've understood it from just
25 the knowledge I have about the collections at U of

1 M, but does Bay Mills feel that they're likely
2 descendants of at least some of the sites in the
3 collection? And I just want to add for the
4 committee and the audience who may not realize,
5 these remains – at least from what I understand
6 that you're talking about – are part of the large
7 collection that we'll hear about – I think we were
8 supposed to hear about it today in the agenda, but
9 we'll hear about it at some point either tomorrow
10 or Friday, that Lauren Miyamoto has been talking
11 about, the largest collections of Native American
12 human remains where she was looking at collections
13 that had over a thousand remains, and I know that
14 University of Michigan –

15 VERONICA PASFIELD: We're well over, yeah, at
16 least 1,600.

17 SONYA ATALAY: – is on there, and they also
18 have 98.9 percent of their collections have – were
19 categorized as CUHR.

20 VERONICA PASFIELD: Correct.

21 SONYA ATALAY: So I'm just wondering if – so
22 these were categorized as CUHR but Bay Mills
23 believes that they may be culturally affiliated
24 with some of these. Is that –

25 VERONICA PASFIELD: We know that there are

1 sites here that are highly affiliable, particularly
2 sites that are – that we believe we are descended
3 from. And particularly as Eric can tell you about
4 the Juntunen and Arrowhead Drive sites on Bois
5 Blanc Island are connected with actually several
6 communities, several federally recognized bands in
7 Michigan, and they – if you look at precedents set
8 by other museums and universities for sites of that
9 era that have been affiliated, these are completely
10 consistent with other sites that have been
11 affiliated by other museums in Michigan. However,
12 some of those other museums are not research
13 universities, and I think that that's kind of one
14 of the keys when looking at these large
15 collections.

16 I know one of the curators – or excuse me, one
17 of the collection managers at the Museum of
18 Anthropology, who actually attended and knew Andy
19 Merriwether, explained that one of the sort of
20 ideal situations for people doing that kind are
21 research are to have populations that exceed a
22 hundred so that the results that you're getting and
23 the connections you want to make are more
24 convincing. So I would imagine that they are one
25 large – collections that are situated at the large

1 research universities may be of particular concern
2 or a focus of what you're going to talk about later
3 today.

4 SONYA ATALAY: Right, I just want to point out
5 that the reason I'm asking these kinds of questions
6 is that the committee has consistently been
7 concerned about collections such as these that
8 large percentages have been – and we've talked
9 about this before – have been placed into the CUHR
10 category. And here we're seeing one of these
11 examples where consultation wasn't done and that
12 they're placed into this category, and then on top
13 of that the DNA testing is being done on those. I
14 know that that's definitely a concern of the
15 committee. So I want to thank you for bringing –
16 bringing this forward and bringing it to our
17 attention.

18 One final question that I have is when we've
19 talked about this, I think it was our last meeting
20 in fact, or perhaps our meeting in Seattle, one of
21 the – and this comes up in some of the work that
22 National NAGPRA has done in their report of who are
23 the culturally unidentifiable where they talk about
24 the fact that with the CUHR materials, a large
25 percentage of them could have come from

1 excavations, have provenience material, and have
2 artifacts associated with them. And so the hope is
3 that with consultation they could then be
4 affiliated or moved into that affiliated category,
5 and in fact, we've seen evidence that this has
6 happened from other universities. And my question
7 is if some of the sites that you're referring to,
8 and particularly in your recent consultation, are
9 some of those sites that have archaeological –
10 where they excavated are there known records about
11 these sites and if they have objects that we might
12 have hope that with consultation they could be
13 culturally affiliated?

14 VERONICA PASFIELD: Thank you for asking that
15 because I should have said that on your last
16 question. The site – the sites on Bois Blanc
17 Island were academic digs. They didn't necessarily
18 start out that way, but there are very thorough
19 academic records. I'm happy to report that the U
20 of M Museum of Anthropology was fully transparent,
21 gave me everything I asked for without me having to
22 really get into great detail. They just gave me
23 their entire sites, and these individuals and their
24 burial objects were very thoroughly excavated,
25 recorded. There's an extensive site report and

1 there's a tremendous amount of cultural items,
2 etcetera, with the sites that Bay Mills is most
3 concerned about, so absolutely. And that's not the
4 only one. There are also some from other tribes in
5 Michigan that have also been denied affiliation
6 and/or disposition.

7 SONYA ATALAY: I guess the hopeful point, and
8 it's my final point, is that what you're telling us
9 about the new – or the new regulations that have
10 come out from University of Michigan, that
11 hopefully with some of this work we'll see some –
12 some of them be – these remains be culturally
13 affiliated in the future. And again thank you for
14 coming and bringing – we've been interested in
15 hearing some of the barriers to compliance, so
16 thank you.

17 VERONICA PASFIELD: You're welcome, and just
18 for other people who are listening who are facing
19 anything similar, we just can't be thankful enough
20 of the work and the advocacy for compliance within
21 – when you go above the museum right into the
22 Office of the Vice President for Research, which is
23 charged with making sure there are consistent
24 research standards and expectations for all
25 research at the university, including those on our

1 ancestors. So we are very hopeful with their work
2 and very appreciative of their work so far, and
3 hopefully you won't see us again and all will be
4 well.

5 MERVIN WRIGHT, JR.: Okay. Are there any more
6 questions of the committee?

7 Thank you.

8 VERONICA PASFIELD: *Miigwetch.*

9 MERVIN WRIGHT, JR.: Okay. David, are we
10 scheduled to conclude at 6:00 or are we going to go
11 until we get done?

12 DAVID TARLER: No, Mr. Chairman, the two last
13 items on the agenda for today were two
14 presentations, and during the course of this
15 afternoon I've negotiated with the two presenters.
16 We'll hear one presentation on the American
17 University/Washington College of Law State Burial
18 Laws Project tomorrow afternoon, and we will hear
19 the other presentation on the status of NAGPRA
20 compliance among museums with the largest number of
21 Native American human remains on Friday morning.

22 But we do need to conclude by 6 o'clock, and
23 so there is time to call the parties to the last
24 dispute back and either hear additional information
25 from them or in the alternative give the Review

1 Committee an opportunity to ask the parties their
2 questions.

3 MERVIN WRIGHT, JR.: Okay. What we'll do is I
4 would like to give the Hoonah Indian legal counsel
5 three minutes and then I would like to give the
6 Penn - University of Pennsylvania three minutes
7 also to rebut anything they hear, and then we'll
8 open it up for questions of the committee.

9 **DISPUTE: HOONAH INDIAN ASSOCIATION & HUNA TOTEM**
10 **CORPORATION - UNIVERSITY OF PENNSYLVANIA MUSEUM OF**
11 **ARCHAEOLOGY AND ANTHROPOLOGY**

12 **ADDITIONAL COMMENTS BY REPRESENTATIVES OF DISPUTE**
13 **PARTIES**

14 **WALTER ECHO-HAWK**

15 WALTER ECHO-HAWK: Thank you very much,
16 Mr. Chairman. I have nine points, which I'll make
17 by way of reply. Nothing changes in as far as my
18 presentation is concerned.

19 Point number one, counsel has said that Archie
20 White was the seller. This is an unproven fact
21 that is not in evidence. You read their brief.
22 His name appears nowhere on the title documents or
23 the sale documents. It's only through surmise that
24 the museum speculates as to his identity.

25 Point two, the fact that the museum goes to

1 Alaska bringing these ceremonial objects on request
2 has never occurred in Hoonah. It's no substitute
3 for true ownership where that is warranted.

4 Point number three, *at.óowu*, as I pointed out
5 in my presentation, we've established that these
6 objects more likely than not are *at.óowu*. Through
7 circumstantial evidence the museum's insistence
8 that we prove each and every step for each and
9 every item to be *at.óowu* in an oral tradition for
10 old items is unreasonable. We've made our case
11 through circumstantial evidence as I point out in
12 my brief.

13 Point four, the standard that they utilized on
14 centrality is only to – I look at these 50 items
15 and figure out which is the most important. And
16 the statute does not confine itself to the most
17 important items but all items of central
18 importance.

19 Point five, their definition of sacred objects
20 is not the statutory definition. When they say
21 that the object must have been devoted in the past
22 to a specific ceremony in the past, that's not a
23 definition criteria that's found in the statute.

24 Point six, on right of possession, as I
25 mentioned earlier, they looked at the wrong

1 factors. They brushed aside the evidence on the
2 law. You look at their brief. They have one
3 sentence in there. There was no clear standards;
4 therefore, we looked at practices at the time, the
5 ANB, and the church influence to try to determine
6 what the law was. The wrong factors.

7 Point eight – or point seven, counsel said
8 that the community knew about the sale. Again, a
9 fact not in evidence.

10 Point eight, counsel says that this tribal law
11 is kind of like the common law, the common law of
12 England that evolves and changes over time and can
13 be defined by the common practices. We're not
14 talking about common law here. We're talking about
15 Tlingit tribal law, which is utterly foreign to our
16 notions of British common law.

17 Point nine, my last point here – oh, well, and
18 that the testimony today is not brand-new, made-up
19 testimony about these four rules, but I think
20 demonstrates continuity of the evidence, right down
21 to the present day to the testimony of the
22 authorities on the subject.

23 My last point, and I thank you for that, is
24 counsel mentions she didn't have opportunity to get
25 my brief. All I can say is that we served this

1 brief First Class mail on the 11th of November. We
2 deposited it in the United States mail First Class
3 to her address. And so if she hasn't gotten it, I
4 can't explain that, but we did what we needed to do
5 as far as serving this brief. Thank you very much.

6 MERVIN WRIGHT, JR.: Thank you, Mr. Echo-Hawk.
7 That was just under four minutes, so we'll give it
8 to you.

9 **WENDY WHITE**

10 WENDY WHITE: I can do better. Thank you,
11 Mr. Chairman. I think I'll just run quickly
12 through the nine points.

13 The evidence does show that Archie White is
14 the seller. There's documentation from Louis
15 Shotridge, and if you look at our response you'll
16 see that there are notes that make it clear that it
17 was the current housemaster who sold the items, and
18 the current housemaster in 1924 was Archie White.

19 With respect to the visits, the reason that I
20 made the point about the visits was only to show
21 that the university has learned a lot in the
22 process of visiting with other communities. We
23 would be happy to have visited the Hoonah community
24 but have not been invited to do so.

25 His third point was at.óowu. I think I made

1 my point clear in my opening presentation that just
2 to say everything is at.óowu because it was found
3 in the Snail House at the time does not make it so,
4 that there is a procedure and some items were found
5 to be at.óowu because they went through the
6 protocol. Not all items do and not all in this
7 collection did.

8 He criticizes our use of the centrality
9 standard. I want to make it clear that the
10 definition of objects of cultural patrimony include
11 the concept of centrality. It was not the case
12 that we were grading on a curve to see if some
13 objects were more central than others. We were
14 looking to see whether there were objects that were
15 central to the culture, and that is the appropriate
16 standard.

17 With respect to sacred objects and my emphasis
18 of the need to find that they were devoted to a
19 ceremony, if you look at the NAGPRA regs, that
20 language is specifically in the NAGPRA regulations.

21 With respect to right of possession, again the
22 argument that we used the wrong standard, I think
23 the argument really is that we can't look at the
24 evidence, and we believe that to be mistaken. That
25 is you look at the evidence of tribal law at the

1 time and you look at the practice, that's how we
2 find out what tribal law was at the time. And we
3 look at what the anthropologists and the experts
4 say at the time – or now about that time. That's
5 how we know what tribal law was and that's how we
6 know that we have the right of possession.

7 With respect to the community and its
8 knowledge, our evidence of that is partly in the
9 DVD and partly because these were not secret
10 negotiations. Louis Shotridge was coming back to
11 the community and he was doing it over a period of
12 two years. It was not a secret that these objects
13 were being sold.

14 And finally, there is a reference again to
15 these four Tlingit rules of alienability, and again
16 I would say those may be the rules today. They may
17 have been the rules with respect to tribal real
18 estate property over time. Those rules did not
19 happen to be the rules in effect in 1924 when Louis
20 Shotridge bought 50 objects from Archie White as
21 part of his collection for the university museum.

22 Thank you for your time.

23 MERVIN WRIGHT, JR.: Okay. I'll open it up for
24 questions – oh, Rosita.

25 **ROSITA WORL**

1 ROSITA WORL: Mr. Chair, I know that we have
2 been, you know, loathe to make this so legalese
3 that we have lawyers after lawyers, you know,
4 discussing the dispute. And so, you know, but we
5 found that it was necessary to do that, and we feel
6 badly in many ways that it was done in that way.
7 And I would hope that the committee would really
8 look at the oral traditions and the testimony that
9 was offered by our clan leaders and representatives
10 from our culture.

11 We've been debating with ourselves about, you
12 know, if we were going to make statements about
13 Louis Shotridge, and it is very difficult for us to
14 do this because in the first time when the
15 University of Pennsylvania came forward and showed
16 the film or the slides of the Mt. Fairweather or
17 the Snail House collection, and that's the way it
18 was labeled to us as a collection, we had a
19 situation where we had a member, actually it was
20 the *SháadéHáni* of the Kaagwaantaan who was present
21 at that viewing. And that respected leader got up
22 and in a very Tlingit respectful and honorable way,
23 he apologized to the T'akdeintaan for what had been
24 done to the T'akdeintaan. And that – that apology
25 meant that there should be no further discussions

1 about – about Louis Shotridge.

2 But it's not the T'akdeintaan who are saying
3 anything about Louis Shotridge, but it is
4 *Yeidiklas'akw ka Kaa hani* from the Shangukweidi,
5 from Klukwan, and I'm from Klukwan where Louis
6 Shotridge heritage is. And Louis Shotridge indeed
7 was probably a better anthropologist than he was a
8 Tlingit. And – but like anthropologists, he's in –
9 he wasn't, you know, without error and he made
10 errors. He made errors in the information that he
11 provided, and you've heard some of the corrections
12 that have been made to the information that he
13 provided.

14 He was also a Tlingit who, you know, maybe saw
15 that our culture was dying or maybe he was fearful
16 that the objects would be lost, and so he differed
17 in his opinion from other Tlingit people. And I
18 think it's probably the most telling where he went
19 to his own clan and he went to get their – his
20 clan's *at.óowu*, and when he was removing them he
21 recorded that the women wept, the women wept as I
22 took their *at.óowu*. And he said had there been one
23 warrior left, if there had been one warrior there,
24 I would have been killed on that spot. He knew
25 very well that Tlingit law was in effect. He had

1 tried for years to get the Whale House objects, and
2 he was unsuccessful in that attempt. And I
3 apologize to the Kaagwaantaan for saying these
4 things, but I think that in the best interest of
5 the Tlingit people and the best interest of the
6 T'akdeintaan and in the interest of our future
7 generations that we have to make these statements.

8 What happened in Hoonah was very sorrowful,
9 and I think we have – we have in the recorded
10 documents, Frank Sea (phonetic) who was from my
11 clan, who was living in the Snail House. And he –
12 he said that he went to bed and when he woke up in
13 the next day that that collection was gone. So
14 that collection left in the dark of the night,
15 under cover, without the knowledge of the clan.

16 And it is – it is very difficult for our
17 people to come forward and to speak ill of another
18 person, especially from another clan, because it
19 usually ends up in war. And we know that we've
20 also used that word war very liberally, but it ends
21 up in a dispute. I mean, it's not war in the
22 classic sense of the war, where we go – we have
23 military confrontations. But it does end up in
24 these kinds of wars, and so we have to be very
25 careful. We're always told, you know, that we have

1 to weigh our words heavily. We have to watch our
2 words. And I think I disagree with some of our
3 clan Elders when they say that the women were given
4 labrets to remind them to weigh their words. I
5 think it was a mark of beauty myself. But we were
6 taught, you know, to weigh our words.

7 And so it's really hard for us to say of this
8 man, and he did record, you know, some very
9 important information. But he also, we know, did
10 not always act with honor among our people. And I
11 think it was telling how our people felt about him
12 in the way that he died. And it was told to me by
13 my grandfather, (Native Alaskan language), the
14 *SháadéHáni* of the (Native Alaskan language), from
15 the Raven House, that when he died, and it's
16 already become part of, you know, almost a myth, if
17 you may, that when he died there was not one
18 Tlingit who come to his assistance. And that he
19 lay on the ground, and when they finally found him,
20 you know, he was all covered in with – he was
21 black. He was covered with bugs.

22 And so, you know, our people have had
23 misgivings about Louis Shotridge, and again I have
24 to apologize to the Kaagwaantaan for saying this.
25 But this is what happened to the T'akdeintaan is

1 that perhaps it was one of their own that did that,
2 and it was – and it – and you heard the reports
3 that somebody did come and apologize for what he
4 had done. And you have even seen it here where we
5 don't like to correct one another, where our
6 counsel keeps saying "at.kow" or something, I can't
7 remember, but he mispronounces it over and over
8 even though we've tried to tell him over and over
9 it's *at.óowu*, but that's the way our people are.
10 It's very difficult for us, you know, to do these
11 things unless we have – it's done within a
12 ceremonial setting where we could do it, we could
13 deal with these conflicts in our ceremonial
14 settings.

15 And I – and if you know what's happened in the
16 past with our past repatriations, I wish Harold
17 were still here, you will hear that when our
18 objects are returned we have to apologize to the
19 spirits of the *at.óowu*, that we allowed them – that
20 we, as Tlingit people, we allowed them to be taken
21 away. We didn't fight more aggressively. We
22 didn't have our warriors there to fight Louis
23 Shotridge. And so we will still have to make those
24 apologies to our spirits through the spirits of
25 that *at.óowu* that they were taken away from their

1 homeland, and they were taken away illegally under
2 our Tlingit law that existed until 1920 and up
3 until the present time. Thank you.

4 MERVIN WRIGHT, JR.: I'd like to open this up
5 for questions from the Review Committee at this
6 time.

7 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

8 DAN MONROE: I have a number of questions and I
9 doubt we'll be able to address them all - I have a
10 number of questions and I doubt we'll be able to
11 address them all, and I would just point out that
12 the questions are intended to help the committee
13 and myself make decisions.

14 With respect to the testimony given that
15 Shotridge knew what was alienable and what was not,
16 in fact, the incident that you just referred to,
17 Rosita Worl, is recorded in the UPM Museum journals
18 of the removal and the statements regarding the
19 removal of objects from his own clan house.

20 I'd like to know how UPM, if I understand it,
21 decided what is and what is not a sacred object.
22 That's a decision within the context of NAGPRA
23 that's made by traditional religious leaders. And
24 it appeared to me that the University of
25 Pennsylvania Museum committee had, in fact, made

1 decisions or it seemed to it that they had made
2 decisions. And how did they determine the
3 centrality of objects of cultural patrimony? And
4 I'm a bit curious to know how the university came
5 to the conclusion that Tlingit law changed such
6 that it was permissible for a caretaker to sell
7 clan owned objects without approval of the clan?
8 Did that happen in 1924, 1923, 1922, what was the
9 basis of that claim? And finally, what's the basis
10 of UPM's knowledge of what is and what is not an
11 *at.óowu*?

12 WENDY WHITE: In the interest of time, I do
13 believe I have answered all of those questions and
14 I also believe that there's more information in our
15 written response. But I do want to respond in
16 saying that under NAGPRA there is a statutory
17 standard for what constitutes an object of cultural
18 patrimony, and the concept of alienability at the
19 time and centrality are critical. And in the
20 definition of sacred object, there are two key
21 factors: is it continued to be used as a sacred
22 object in a ceremony, and was it before, in the
23 past, devoted to a particular ceremony.

24 There's nothing in the statute that says that
25 those factual decisions, which are really legal

1 decisions, do they meet the legal definitions that
2 those legal decisions are to be made by the clan.
3 On the contrary, there is a standard in the statute
4 which provides that a museum committee, such as
5 ours, should look at all the relevant evidence and
6 make the best decisions that they can based on the
7 evidence, not just a statement by the clan these
8 are all *at.óowu* and we want them all back, and that
9 they argue that because they say they meet the
10 statutory standards that that is the end of the
11 matter, on the contrary.

12 So what is it that we did? What did the
13 museum do? The museum looked at the
14 anthropological literature, and there is a lot, and
15 if you look at our written response, you'll see a
16 lengthy bibliography. There are experts, and these
17 experts talk about the traditions and the culture.
18 And included in that discussion is a discussion of
19 what were the tribal rules at the time. This is an
20 oral tradition. There are no statutes that went
21 into effect in 1920 or 1930 or 1950. So how do we
22 know what the law was in the 1920s, 1924 when Louis
23 Shotridge was collecting? We know because we have
24 considerable evidence of what happened. We know
25 the response of the community. We have testimony

1 now that the community knew and did not disapprove
2 of these sales until many years later.

3 We also have very detailed anthropological and
4 cultural information about the objects, the ranking
5 of objects by the community, the ranking of crests
6 by the community, what the literature says about
7 history and traditions, and our own experience as
8 scholars in attending these ceremonies over the
9 years and in learning and cooperating with many
10 Native American peoples, Tlingit in particular, and
11 it was based on all of the evidence and the
12 statutory standard. And as a result of all of that
13 work that was done, the conclusions that were drawn
14 were made because of the actual evidence that they
15 had before them. Thank you.

16 MERVIN WRIGHT, JR.: Are there any more
17 questions of the committee?

18 SONYA ATALAY: I have a follow-up question on
19 that actually, if I can ask. They're brief -
20 they're two but they're combined and they're very
21 brief.

22 MERVIN WRIGHT, JR.: All right.

23 SONYA ATALAY: I promise, they're very short
24 questions.

25 MERVIN WRIGHT, JR.: Last one.

1 SONYA ATALAY: The first is because this
2 committee did all the work of going through, and I
3 think you've detailed how much time they spent
4 going through each of these items, and I'm just
5 wondering if you have any – can tell us how many
6 people were on that committee, if you have just a
7 general number? Were there three? Were there 15?

8 WENDY WHITE: The committee did not remain
9 constant over the entire period but there were
10 approximately 12 people on the committee.

11 SONYA ATALAY: And you said that they were
12 scholars and Tlingit experts. I'm assuming
13 probably at least some of them or most of them were
14 anthropologists.

15 WENDY WHITE: Correct.

16 SONYA ATALAY: And I'm wondering how many
17 Tlingits were on the committee?

18 WENDY WHITE: How many members of the Tlingits
19 work for the University of Pennsylvania at the
20 time, there were none.

21 SONYA ATALAY: Well, not that they needed to
22 work for, but that they, as cultural experts, that
23 they served on the committee.

24 WENDY WHITE: Oh, there were at least one,
25 maybe two.

1 SONYA ATALAY: And how many of those were
2 members of the Snail House that would have the
3 expertise to make the determination that these were
4 *at.óowu*?

5 WENDY WHITE: They were not making the
6 determination. I'm sorry if I gave you that
7 impression. Our committee made the determination
8 based on the expert testimony and the expert
9 information they had from experts like Sergei Kan,
10 de Laguna, from the expert Tlingits that they did
11 talk to, from people in the community. So the
12 decision was not made by someone on the outside.
13 It was actually made by members of the committee
14 based on all the evidence. Thank you.

15 MERVIN WRIGHT, JR.: Okay. With that, we are
16 going to bring to a conclusion today's Review
17 Committee meeting. We want to thank each and every
18 one of you for being here today. And we will
19 reconvene in the morning to continue this meeting.
20 Thank you.

21 **MEETING ADJOURNED**

22

23

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25